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STATE OF MONTANA

SPECIAL EDUCATION

Report on Compliance with Laws
Applicable For This State

September 1978



OFFICE OF THE LEGISLATIVE AUDITOR

STATE OF MONTANA

STATE CAPITOL • HELENA

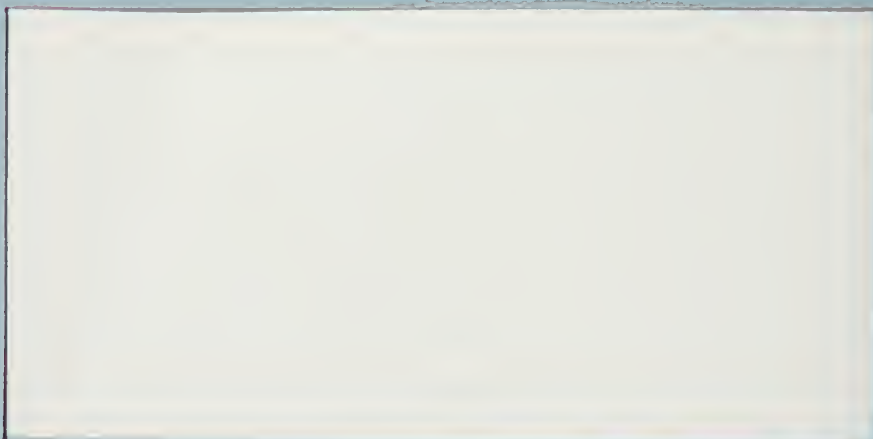
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STATE OF MONTANA

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MONTANA LEGISLATIVE AUDIT COMMITTEE
AND OFFICE OF THE LEGISLATIVE AUDITOR

The Legislative Audit Committee is a joint, bipartisan standing committee of the Montana Legislature. The committee is composed of eight members (listed below) appointed by the Senate Committee on Committees with the approval of the Senate and the Speaker of the House.

The committee and the Office of the Legislative Auditor were established for the purpose expressed in Section 79-2301, R.C.M. 1947:

"Because the legislative assembly is responsible for authorizing the expenditure of public moneys, designating the sources from which moneys may be collected, shaping the administration to perform the work of state government, and is held finally accountable for fiscal policy, the legislative assembly should also be responsible for the audit of fiscal accounts and records so that it may be assured that its directives have been faithfully carried out. It is the intent of this act that each agency of state government be audited for the purpose of furnishing the legislative assembly with factual information vital to the discharge of its legislative duties."

To accomplish the foregoing purpose, the Office of the Legislative Auditor is empowered by law to conduct audits of state agencies to ascertain, among other things, whether state agencies are:

"... carrying out only those activities or programs authorized by the legislative assembly and is conducting them efficiently and effectively."
(Emphasis supplied)

The law also authorizes the Office of the Legislative Auditor to make recommendations for improvement of state government programs and operations. Recommendations for improvement of administrative activities are addressed to the agencies responsible for the activities. Recommendations for legislative changes are left to the discretion of the Legislature.

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STATE OF MONTANA

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LEGISLATIVE AUDITOR

The Legislative Audit Committee
of the Montana State Legislature:

Herein transmitted is our program/performance and compliance audit of special education programs in the school districts.

The purpose and scope of this audit are explained in Chapter I (page 1) of the report.

The report contains major recommendations to the school districts for improvements in providing special education to handicapped children and compliance with limitations on use of special education funds; to the Department of Community Affairs in carrying out its local government audit responsibilities; to the Office of Public Instruction for its supervisory responsibilities; and a change in the system of allocating financial support to the school districts.

We wish to express our appreciation to the staff of the school districts and the Office of Public Instruction for their cooperation and assistance.

Sincerely,

Morris L. Bruset

Morris L. Bruset, C.P.A.
Legislative Auditor

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SUMMARY OF RECOMMENDATIONS

As a separate section in the front of each audit report we include a listing of all recommendations. The recommendations for this report are grouped by entity responsible for correction--a final group of recommendations suggesting legislative change are not directed to any particular entity. Included are agency replies regarding concurrence or nonconcurrence with recommendations when available. A number of recommendations directed to school districts have no agency reply because it was not feasible to obtain school district's responses. The full replies of the Office of Public Instruction and the Department of Community Affairs are included in a separate section at the back of this report.

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School Districts

Consolidate special education forms to reduce the amount of paperwork while retaining essential information.	15
Develop in-service training for special education personnel to assist in providing more complete student evaluation and child study team records.	20
Seek assistance of the Office of Public Instruction in providing in-service training for preparing more effective individualized education programs.	23
Consider the need for more frequent reviews for special education students.	24
Yellowstone Boys Ranch School District #58 bill for actual cost provided for by the tuition agreement with Wyoming.	31
Allocate shared equipment costs between regular and special education programs in accordance with the equipment use.	36
Business personnel become familiar with Office of Public Instruction's rules and regulations which limit and restrict the use of special education funds.	39
Determine the extent that school psychologists are used for regular education responsibilities and provide for appropriate cost sharing in the budget process.	46

Office of Public Instruction

Clarify the rules related to parental consent and delete those not required to meet federal requirements. 15

Agency Reply: Do not concur. See page 97.

Obtain clarification from the U.S. Department of Health, Education, and Welfare of the need for environmental studies. 20

Agency Reply: Do not concur. See page 98.

Negotiate an agreement with North Dakota for reimbursement of special education costs. 31

Agency Reply: Concur. See page 98.

Determine if federal assistance is available for the education of those students placed in Yellowstone Boys Ranch School District #58 from Indian reservations. 31

Agency Reply: Concur. See page 98.

Improve the definitions of both learning and emotionally disturbed handicaps. 86

Agency Reply: Concur. See page 102.

Monitor school district special education programs. 90

Agency Reply: Concur. See page 103.

Department of Community Affairs

Encourage all school districts to establish separate accounting for special education funds and report noncompliance in the school district audit report. 34

Agency Reply: Concur. See page 104.

Require retention of attendance records in a fashion that will permit an audit of the ANB calculation, and audit the ANB calculations on a test basis in each school district. 44

Agency Reply: Concur. See page 104.

Legislative Changes

To provide an outside board of trustees for the Yellowstone Boys Ranch, School District #58.	30
Change the funding distribution formula to a weighted per pupil or similar system.	79
Require a percentage of funding participation by local school districts.	79

Office of the Legislative Auditor

SPECIAL EDUCATION
COMPLIANCE WITH LAWS APPLICABLE FOR THIS STATE

SUMMARY

This report is a result of our program audit of special education in the various Montana school districts. The audit of special education was directed by House Joint Resolution 105 of the 45th Legislature.

Chapter I (page 1) introduces the report by explaining the objectives and scope of our audit work. The audit focused on special education activities of the Office of Public Instruction and 32 representative school districts.

Chapter II (page 4) addresses special education in the school districts, providing background on the eligible handicaps, the children served in Montana, and school district procedures. The chapter contains comments and recommendations regarding school district recordkeeping (page 10 and 15) and providing special education to handicapped children (pages 20 and 23). We also comment on the unique funding and special education program at the Yellowstone Boys Ranch (page 24). This chapter of the report includes comments about the questionable use of special education funds (pages 32, 34, and 36) and the erroneous calculation of ANB related to both regular education and double counting of full-time special education students (page 39). Finally,

the possible use of school psychologists for regular education students is discussed (page 45).

Chapter III presents the financing of special education in the school districts (page 47). Included is data explaining the previous system used by the state to assist local districts in funding special education programs (page 47), the present system (page 52), several alternative systems used by other states (page 71), and the projected federal assistance available to Montana under Public Law 94-142 (page 51). The chapter points out that legislative fiscal control existent for regular education is not present for the system of financing special education (page 53) and can cause circumstances which require statewide property tax deficiency levies (page 57). Further, the present allowable costs included in the state financial support permits supplanting of regular education costs (page 59). Because of limited staffing, a short timeframe for approving budgets and ultimate education responsibility lying with the school districts, the OPI budget analysis has not been, nor can it be, very effective (page 65). Although Montana supports special education by financing 100 percent of school district costs, most states require the local districts to participate in at least part of the costs (page 75). The chapter contains a recommendation that legislation be enacted which would substantially reduce the need for Office of Public Instruction budget analysis by: (1) changing the

system used for allocating financial support to the school districts; and (2) requiring school districts to participate in the cost of special education (page 79).

Chapter IV discusses responsibilities of the Superintendent of Public Instruction (page 80) and presents recommendations regarding these duties. Definitions of learning disabled and emotionally disturbed handicaps are ambiguous and have resulted in inconsistent placements between school districts (page 80). Further, program monitoring required for continuing eligibility for federal assistance and providing technical guidance to school districts has not been done recently (page 87).

Chapter I

INTRODUCTION

This report is a result of our program audit of special education in the various Montana school districts. Special education is primarily administered by school districts under guidelines of the Office of Public Instruction (OPI). We performed the audit of special education in the school districts as directed by House Joint Resolution 105, of the Forty-Fifth legislature, which directed the Office of the Legislative Auditor to conduct an annual audit of selected special education programs in the school districts throughout Montana.

ORGANIZATION OF THE REPORT

This report contains four chapters. Chapter I presents an introduction to the report and summarizes the scope and general direction of the audit and the audit report. Chapter II presents a detailed commentary on school district special education programs and various questionable expenditures from funds designated for support of special education programs. The chapter contains recommendations to the school districts for correction of selected aspects of their programs. Chapter III is a discussion of the financing of special education programs. It explains the previous method of financing special education in Montana, the present method and several alternative methods used in other states. Further, the chapter discusses the projected federal support of the state programs and the OPI budget analysis. There

are also recommendations to change the state financing method to resolve some of the problems observed. Chapter IV presents certain responsibilities of the Office of Public Instruction. The chapter contains recommendations for strengthening special education programs in Montana.

Finally the substance of this report was discussed with officials of interested school districts, members of the Montana Special Education Advisory Council, officials of the OPI, and the Department of Community Affairs and other interested parties. Their views, comments and suggestions were considered in the formulation of this report. The formal responses of the OPI and DCA are included separately at the back of the report.

OBJECTIVES OF THE AUDIT

The objectives of the audit were: (1) to determine whether the state and individual school districts had developed a special education plan for accomplishing the purposes of both state and federal law; (2) to determine whether the delivery of special education in Montana was reaching those students who required the service and whether that delivery was efficient; (3) to determine whether the OPI was providing appropriate guidance to the school districts regarding delivery of service to the students; and (4) to determine whether state monies earmarked for special education purposes were being spent solely for special education needs.

SCOPE OF THE AUDIT

The audit focused on special education activities of the Office of Public Instruction and 32 representative school districts which we visited across the state of Montana. We examined numerous student files to determine that the students served through special education funding were in fact eligible and that the service extended was documented in relationship to the student's needs. We also evaluated the budget procedure utilized by the OPI to deliver money to school districts in support of special education programs and examined various accounting systems and records in the school districts to determine that funds were properly spent for special education purposes. We also took steps to determine that handicapped children were not excluded from special education. An overall consideration in our evaluation was adherence to guidelines contained in the OPI rules and regulations for special education and the United States Department of Health, Education and Welfare regulations. Since a major portion of the handicapped children served through special education require psychological evaluations we contracted with a psychologist from the University of Montana to evaluate these services and make recommendations for observed deficiencies. Although the consultant's report has not been fully included in our audit report, many of the findings and conclusions disclosed by the psychologist are incorporated. Copies of that report are available upon request.

Chapter II

SPECIAL EDUCATION IN THE SCHOOL DISTRICTS

Special education means specially designed instruction, available at no cost to the parents or guardian, to meet unique needs of handicapped children. The instruction is not limited to classrooms but may include physical education, home instruction, instruction in hospitals and institutions, speech pathology, audiology, occupational therapy, and physical therapy. Currently, the law (Section 75-7801, R.C.M. 1947), defines a handicapped child as being one who was evaluated as mentally retarded, hard of hearing, deaf, speech impaired, visually impaired, emotionally disturbed, orthopedically impaired, other health impaired, or having a specific learning disability. A qualifier is that because of these handicaps the child needs special education and related services. The OPI believes that all of the 570 Montana school districts provide special education services in some form to handicapped children.

The exact beginning of special education in Montana is difficult to establish. The OPI had consulting staff for assisting school districts in special education available in 1962. During the 1971 legislative session, Chapter 78 of Title 75, R.C.M. 1947, was enacted formally initiating special education in the school districts. The program in the school districts was to be supervised and coordinated by the Superintendent of Public Instruction and was partially

mandatory and partially discretionary. Mandatory requirements existed for school districts that had ten or more educable mentally retarded children or ten or more physically handicapped children. A physically handicapped child included those with such disabilities as cardiac impairment, cerebral palsy, chronic health problems or inadequate speech, hearing, or vision. All other special education for handicapped children at that time was discretionary for the district. However, the law contained provisions for requiring classes where smaller numbers were present--the parents, of four or more children needing special education in the educable mentally retarded or physically handicapped classifications, could petition for the establishment of special education classes.

Special education in Montana has evolved from a voluntary offering of services to handicapped children to a mandatory requirement that services be provided. In the process of this evolution, the number of eligible handicaps has also increased substantially. While Montana statutes establishing special education requirements preceded federal requirements, much of the proliferation in identification of handicaps came about through passage of Public Law 94-142. The federal law required special education programs be made available to handicapped children and offered a degree of federal support for those states which complied with the mandatory provisions of the law. Along with the federal statute, there were extensive federal rules and regulations

developed to govern the administration of special education in the individual school districts. Generally, compliance with federal requirements begins with the submission of a state plan detailing the steps that the state will take to meet the requirements of the law. For special education, OPI has greater control and responsibility than the regular education programs.

The federal rules and regulations require procedures for the identification, location, and evaluation of handicapped children. Additional requirements relate to assurance that all information regarding the evaluation and names of handicapped children is maintained in a confidential manner, and that an individualized education program be developed for each student. The state must also provide assurance that due process is permitted to the handicapped student and the parents of the student. Basically, what this means is that a parent may contest the evaluation procedures, the placement, or the educational program if the parent has reason to believe that it is inappropriate. It also provides for establishing a procedure for notifying the parent of the intention to evaluate. Although the federal statute merely established a requirement for notifying the parent of an intention to evaluate a student, the rules and regulations have gone somewhat further by requiring parental approval and sign-offs for the evaluation process and the actual placement of the student into a particular educational program. The federal rules and regulations places a

specific responsibility with the Superintendent of Public Instruction to assure that the local districts are carrying out the special education requirements and that the Superintendent of Public Instruction will establish a monitoring program to evaluate the activities of the districts. Guidelines have been promulgated by the OPI to assist the school districts in providing for the needs of handicapped children. The basic responsibility for providing educational services to handicapped children rests with the school districts.

The number of school districts providing special education to handicapped children has been gradually increasing. The school districts which receive budget authority for spending special education funds have increased from 240 in school year 1977 to 255 in school year 1977-78. In addition, there are a number of school districts that were served directly by state employees during school year 1976-77 through the regional service centers. During that year, the Office of Public Instruction met the needs of small school districts through 11 regional service centers scattered throughout the state. However, the biennial appropriation for the regional service centers for school years 1977-78 and 1978-79 contained restrictive language. This language precluded OPI from paying any state employees from this appropriation, and suggested that the service be provided under contract with local school districts. Thus, the

11 regional service centers in the current school year are funded through contracts with various school districts.

Included in the 255 school districts with direct budget authority are a number of small co-ops that have been established to service multiple districts. The cooperatives function much in the same fashion as the regional service centers. For example, small districts do not have a sufficient student workload to justify the employment of a full-time school psychologist. OPI rules and regulations require that there be 1,500 students served by a school psychologist. A similar limitation exists regarding speech therapists, where a standard of 1,000 students must be served by a full-time speech therapist. A special education teacher can also be provided in this manner to multiple districts where there is an insufficient workload to justify the full-time employment of a teacher.

When we began our review of special education in the school districts, the Office of Public Instruction special education officials advised that they were aware of only one school district which had not established a special education program for its students. Upon discussing the matter with the superintendent of that particular school district he stated that his primary concern in not starting a special education program was that he would be required to open his district and school to handicapped students residing in a nearby state institution. As an alternative to this, the superintendent began a special education program with local

school district funds. The Office of Public Instruction did not agree with this approach and requested an attorney general's opinion as to the legality of the school district initiating its own special education program. At the same time a request was made to clarify the need for opening the local school to the institution population. In 37 Opinions of the Attorney General #98, the Attorney General held that a school district may not establish a special education program wholly independent of state funding. A special education program is not required to serve children in a state institution or to serve residents of group homes within the district at that district's expense. The district may provide the services cooperatively by contract. Since that opinion, the school district now is operating a special education program funded through the state system.

The Office of Public Instruction believes that all school districts are providing special education services either directly or through the cooperatives and regional centers. However, the Office of Public Instruction does not have specific data showing which school districts provide special education and which ones do not.

We were advised that an existing report has been revised to show this data for the next school year. It would appear that such data is necessary to demonstrate that all eligible handicapped children are enrolled in special education programs, and thus satisfy requirements for continued federal assistance. This is especially essential since the

11 regional service centers will be terminated at the end of the 1977-79 biennium.

The February 1, 1978 count of handicapped children being served for their special needs in all Montana school districts was as follows:

Montana Handicapped Children Served by School Districts February 1, 1978	
<u>Handicap</u>	<u>Number</u>
Hard of Hearing	146
Deaf	17
Mentally Retarded	2,146
Other Health Impaired	191
Orthopedically Impaired	148
Speech Impaired	3,938
Visually Impaired	40
Learning Disabled	4,397
Emotionally Disturbed	<u>442</u>
Total	<u>11,465</u>

Source: Compiled by the Office of the Legislative Auditor from data provided by the Office of Public Instruction.

Illustration 2 1

Special Education Paperwork

One of the first observations made upon beginning our review of special education in the school districts was the large amount of paperwork required. The paperwork for a child placed in a special education program is significantly greater than for a child in regular education. This concern was expressed by many teachers to our auditors. In addition, our consulting psychologist commented that the records

contained excessive irrelevant material and was lacking in relevant material. Most of the paperwork results specifically from state and federal rules and regulations governing the processes of providing special education. While some of the excess paperwork is generated for due process rights and protection of the student and parent, much is required due to the fact that the students are handicapped.

The process has been designed to comprehensively evaluate and meet special needs of handicapped children. It is similar to that which has proven to be effective in state institutions for handicapped children. Much of the paperwork is intended to be a tool with which to better serve these children, i.e. evaluations are necessary to identify what the child's needs are and what individualized education programs are necessary to specifically address each one of those needs. While we believe that some of the procedures may be unnecessary and should be eliminated, we support and encourage the use of paperwork addressing the special needs--this is discussed extensively in subsequent sections of this chapter.

In reviewing the various forms that each school district was using to document special education needs and obtaining parental approval, we observed that there were substantial variations between school districts. Some school districts were using as many as 23 different forms while others were using as few as 9 forms. We noticed instances where some of the forms had been consolidated in

some districts, and in other districts certain procedures or forms were not being utilized.

One of the burdensome requirements of the Montana special education program relates to repeatedly obtaining parental consent for decisions concerning handicapped children. The specific governing requirements are contained in the rules issued by the Office of Public Instruction. Special Education Rules and Regulations (A.R.M., Chapter 18, Title 48) were generally designed to meet the requirements imposed by the U.S. Department of Health, Education and Welfare. The federal requirements stem from Public Law 94-142. The federal statute provides specific procedures to protect the student and parents but requires only that notification of intent to evaluate and notification of intent to place into a special education program be given to parents. Notification to the parents of the right to contest an evaluation or placement is also required.

In implementing Public Law 94-142, the Department of Health, Education and Welfare promulgated rules and regulations expanding the notification requirement. This expansion specifically requires written parental approval for pre-placement evaluation and the initial placement of the handicapped child.

The OPI rules and regulations have further expanded the requirement for written parental consent. In addition to

consent for pre-placement and evaluations and initial placements, the OPI requires parental consent for the individualized education program (48-2.18(18)-Sl8310); annually for continuation in the special education program (48-2.18(18)-Sl8310); for reevaluation (48-2.18(14)-Sl8110(4); and for changes in the educational status (48-2.18(14)-Sl8120).

For this latter educational status requirement, most school districts interpret this as requiring parental sign-offs for changes to the individualized education program. While reviewing student files, we became aware that parental consent was obtained each time a change in the individualized education program was affected. In discussing this with various school teachers and special education administrators, we found a differing opinion as to the desirability of continuing the requirement for written parental consent. Some desire to continue the procedure because of the ever present danger or threat of law suits. Other school teachers and administrators with whom we spoke wanted the requirement for written parental consent at frequent intervals discontinued. In some instances we were advised that the parents themselves are displeased with the requirement that they have to repeatedly return to school to sign these consents.

In examining student files, it became apparent that on numerous occasions there were significant delays incurred in implementing new programs for students because of the lack of parental consents. Teachers commented that in a number

of instances consent is difficult to obtain, simply because of a lack of interest by the parent.

Part of the reason for requiring parental consent of the individual education programs is to obtain parent involvement. However, we were advised that generally parents want their children to receive the additional assistance but seldom contribute substantially to the child's education program. Further, it is seldom that the parents do not agree with the evaluation and placement of the handicapped students. It seems obvious that the requirement for repetitive parental consent has been designed to satisfy a very small percentage of parents who may wish to object to the program and placement of their child into special education. It seems inconsistent that on one hand laws (Public Law 94-142 and section 75-7805, R.C.M. 1947) place an absolute requirement that special education be provided to handicapped children, and on the other hand, continued permission to provide that service must be obtained.

The paperwork process for special education should be reduced to a minimum. The school districts should evaluate their procedures in relation to the requirements of the OPI rules and regulations, and consolidate special education forms whenever possible. The OPI should clarify its rules and regulations relating to parental consent and delete those not required to meet federal requirements.

RECOMMENDATION

We recommend that the:

1. School districts consolidate special education forms to reduce the amount of paperwork while retaining essential information.
2. Office of Public Instruction clarify the rules related to parental consent and delete those not required to meet federal requirements.

Student Evaluations And Child Study Team Records

Many of the records which we reviewed, regarding the evaluation of students and the child study team determination of needs and placement, were not sufficient to show the reason for placement.

In most instances, the referral form which initiated the evaluation for special education contained very brief explanations-- sometimes one or two words--of the reason for the suspected need for special education. On other occasions there were no referral forms to explain why the regular education teacher believed a student should be provided special services. Most often the evaluation consisted of either a psychological report discussing the results of psychological testing or statistical data regarding achievement tests. Seldom did the records contain a discussion of the child's performance in the classroom.

We also observed many instances where the actual handicapping condition was not specifically identified by the child study team. This could have been a result of the

desire by many of the special education teachers to not "label" the child with a handicap. There was a prevalent attitude among most of the teachers and school psychologists, that because the labeling process did not contribute to the child's education, it may serve to the detriment of the child and should be avoided. This appears unnecessary considering that these records must be maintained in strictest confidence. They are not available for the general public to observe. The OPI rules and regulations require a comprehensive evaluation to determine the child's need for special education. However, in many instances when we questioned the eligibility of a student based on the available records, there was additional information used which was not in the files.

An official of one of the school districts suggested that it was not necessarily a question of making comprehensive evaluations, but rather, a question of having someone record the data which a child study team considers. This official suggested that each person who attends the child study team meeting should bring a prepared statement that would be inserted or retained in the records for that particular child. Such a record would prove valuable to the child study team and the child's subsequent special education instructor.

In evaluating the records maintained for most students, it appears that the special education staff maintained only minimal records to assure compliance with the Office of

Public Instruction special education rules and regulations. Rules and regulations specify certain persons who shall be part of the student's child study team in making the determination of needs and for placement into a special education program. The reason for inclusion of these personnel on the child study team stems from a requirement of the Department of Health, Education and Welfare rules and regulations and also because a comprehensive evaluation of the students needs has a much greater potential for assisting in meeting those needs. The more data that is recorded in the files regarding those needs, the more likely it is that the person teaching the child can benefit the child. The entire program for assisting these children is designed as a treatment of the handicapped and hopefully if all the tools which are available to the instructor are used, there is a greater likelihood of benefit to the child.

We noticed some districts where an intelligence test was administered for evaluation of the student, but a written report summarizing these results was not made. The files contained only a few notes as to the result of the intelligence test. We noticed other instances where students were placed in the special education program as learning disabled, but there had been no psychological evaluation. The Office of Public Instruction's special education rules and regulations (48-2.18(14)-Sl8170b) require a comprehensive evaluation at least every three years. We observed

numerous instances where an updating of the psychological evaluation was not done.

Another aspect of the student evaluation for placement into a special education program are social-cultural evaluations of the student. Specifically, the federal regulations and the OPI rules and regulations provide that a student should be excluded from placement into special education if his inability to function relates to his environment. It would appear likely that the student's home environment would contribute substantially toward his attitude towards learning in academic areas and that such an environment does not relate to a specific learning disability. While this is an exclusion factor that could lead to not serving some students, it is one that seems to be required by applicable rules and regulations.

During our review of student files, there was no evidence that the environment of the student was considered in evaluating for a learning disabled handicap. We spoke to one school psychologist who had observed a student from a minority culture and his evaluation of that student suggested that his test procedures were not reflective of the student's abilities. In that instance, he refused to declare the student eligible because he believed that the student's home environment contributed to the low academic performance. In another school district, when questioned about the matter the school psychologist advised that they

assumed that since a student did not perform in his home environment, that culture was not the contributing factor.

As noted previously, it is extremely rare that the student's environment or culture was evaluated and considered in the placement for special education services. Both OPI and school district officials commented that environmental influences are very hard to determine, that there would be a significant cost in obtaining the data, and that it is questionable whether a student could be denied special services if the home environment caused the inability to function. If the data is not useful in making determinations, the OPI should seek clarification of the matter from the U.S. Department of Health, Education, and Welfare to protect future funding.

The consulting psychologist we employed also commented that many child study team reports did not list the handicap or contain a description of how the child qualifies for the handicapping condition. Not only is the data essential for identifying eligibility for placement and need but failure to properly document the placement could result in loss of funding to the state. Federal rules and regulations provide that improper placements require the state to obtain a refund and return money used for those students to the federal government.

RECOMMENDATION

We recommend that:

1. School districts develop in-service training for special education personnel to assist in providing more complete student evaluation and child study team records.
2. The Office of Public Instruction obtain clarification from the U.S. Department of Health, Education, and Welfare of the need for environmental studies.

Preparation Of Individualized Education Programs

With few exceptions most of the school districts we visited were preparing less than adequate individualized education programs. The requirement for an individualized education program is contained in the federal statute (Public Law 94-142, Section 612(19) and Section 613(a)(4). This statute cites five specific items that must be included in the individualized education program. The requirements are as follows:

- A. A statement of the present levels of educational performance of the child.
- B. A statement of annual goals, including short-term instructional objectives.
- C. A statement of the specific educational services to be provided to the child and the extent to which the child will be able to participate in regular education programs.
- D. The projected date for initiation and anticipated duration of the services.

E. Appropriate objective criteria and evaluation procedures and schedules for determining on at least an annual basis whether the instructional objectives are being achieved.

The individualized education program, with proper implementation, is probably the single most important tool available to the special education teacher for serving the handicapped child. It is the culmination of the evaluation process and is designed to specifically address identified needs and provide results to the child. Properly developed and used in conjunction with the evaluation, this document should assist greatly in meeting the needs of the handicapped child. However, our review of student files at the school districts disclosed a substantial misunderstanding regarding the preparation and implementation of this tool.

We commonly observed a complete absence of an individualized education program. In other instances we observed that there were no goals or objectives established for the individual students. We noted cases where the child study team had attempted to identify goals, but the goals were not really goals-- they were merely procedures to be implemented for the student or were short-term objectives. In other instances, we observed that established objectives were not measurable. Nonmeasurable objectives are generally of no value for determining whether the student had achieved in accordance with the objectives. Other documents purporting to represent individualized education programs were merely

mimeographed lists of numerous objectives. These were inserted for all students in the program and obviously were not individualized for the specific needs of the student.

As a general rule, most of the special education instructors we contacted did not fully understand the need for nor the reason for the individualized education program. As one superintendent commented, he does not have any teachers who are familiar with the preparation of an individualized education program. In discussing the tool with the various instructors, we found that most were unfamiliar with individualized education programs but yet desired specific assistance for understanding and preparing them. The need to improve the quality of most individualized education programs became particularly noticeable when compared to examples at several school districts that had spent considerable effort in developing them--in these districts the individualized education programs were well prepared and related to specific student needs. This need was also confirmed by the consulting psychologist we employed. The consultant reviewed a number of individualized education programs and specifically commented that more individualization of programs would be helpful. The consultant further commented that school personnel need guidance in the preparation of the individualized education programs.

Many individualized education programs seemed to be prepared merely as a compliance measure rather than for use as a tool to assist the student. Generally, the assistance

which the school districts require could be provided by the OPI during its monitoring process. Officials of the OPI advise that in-service training is voluntary on the part of school districts. However, OPI has provided such assistance in the past and plans to expand the training to others.

RECOMMENDATION

We recommend that the school districts seek the assistance of the Office of Public Instruction in providing in-service training for preparing more effective individualized education programs.

Evaluation Of Student Progress

The Office of Public Instruction's rules and regulations (48-2.18(18)-S18330) governing special education provide that there must be at least an annual review of the student's individualized education program. This is required to determine whether the short-term instructional objectives of the individualized education program are being met and also to determine whether the program devised for the student is effective for that student. Our review of student files in the school districts generally showed that the special education instructors were meeting these minimum requirements for an annual review of the student's progress. However, this is a considerable lapse of time considering that the regular education process provides a student with report cards on a quarterly basis during the school year. Further, in regular education parents of a student who is not progressing well in particular subjects receive notification of potential grade deficiencies to aid the student in

improvement. These students receive evaluation at intervals more frequent than quarterly.

It would appear that special education students should have at least quarterly reviews. Some school districts recognize the need for more frequent reviews and use methods called precision teaching. Under precision teaching student progress is measured almost on a daily basis and is charted to show whether improvements are occurring. While we are not necessarily recommending that all teachers utilize precision teaching methods for special education students, a system of more frequent reviews and the charting of progress toward short-term objectives should be considered. More frequent evaluations would show whether a student is progressing toward individualized education program goals and short-term objectives and whether teaching procedures are meaningful for assisting the student. It is unrealistic to subject a student to teaching procedures for an entire year which fail to produce results.

RECOMMENDATION

We recommend that the school districts consider the need for more frequent reviews for special education students.

Funding Education for Yellowstone Boys Ranch

Special education funds comprise the sole educational funding source for the school district that serves the Yellowstone Boys Ranch. School District #58 is unique--it is the only one of its kind within Montana and no taxable

property exists within the district boundaries which comprise the Yellowstone Boys Ranch. The school district was created under the provisions of Chapter 105 of the Session Laws of 1965. However, the law which enables the creation of such a school district was repealed by the 1971 Legislature. Because no taxable property exists within the school district, it became entirely funded by the mandatory county tax and state foundation funds. Because the school district is unique, comments should not be considered applicable to the statewide special education program, but are directed at the Yellowstone Boys Ranch education system.

In addition to the unique financing of this school district, it has a unique educational program. The Yellowstone Boys Ranch largely accepts children with severe emotional disturbances. At the encouragement of several state agencies, the organization has developed a program to assist severely emotionally disturbed children. The Boys Ranch serves this need through an assessment and residential treatment center and has just recently obtained accreditation from the Joint Commission on the Accreditation of Hospitals. The education program provided by School District #58 includes needed education while students are in the assessment facility and the residential treatment facility. Once the student is able, he is then transferred to less restrictive programs at the Boys Ranch and the elementary school. The special education program is designed

specifically to assist the student in overcoming his emotional problems while providing basic educational needs.

Initially, the school district received funding through the foundation program with its mandatory levy support from the local county. The district charged sending school districts tuition for students who had been placed at the facility. An OPI official advised that the tuition funds received by the school district were spent as the permissive levy for the school district and any excess as a voted levy. Since the 1974 legislative change which provides 100 percent state support of special education programs, the district is now financed totally by special education funds.

The budgets for the district, compared to enrollment, are presented below:

School District No. 58 Yellowstone Boys Ranch Enrollment and Budgets		
<u>Fiscal Year</u>	<u>October 1 Student Count</u>	<u>Amount</u>
1973-74	56	\$ 91,798
1974-75	44	170,475
1975-76	51	197,265
1976-77	56	204,119
1977-78	41	262,417
1978-79	60 (Est.)	282,531

Source. Compiled by the Office of the Legislative Auditor

Enrollment for the elementary school is maintained at about 50 students. In addition, during fiscal year 1977-78 and 1978-79 there are students being served in the intensive care units and the assessment center for emotional disturbances. Fiscal year 1973-74 was funded from foundation ANB support, whereas all subsequent years are funded from special education.

The school district board of trustees is made up of Yellowstone Boys Ranch employees who live on the ranch. This situation exists because trustee candidate qualifications prescribed by state law (Section 75-5913, R.C.M. 1947) require eligibility to vote in the district and because the only residents of the district live at, and are employed by, Yellowstone Boys Ranch. Normally, a school board must consider the effect of the school district expenditures on the local electorate. However, its budget requires the approval of OPI as for other districts. Consideration should be given to providing an exception to the residency requirement for this unique district and amending Section 75-5913, R.C.M. 1947, to enable appointment of trustees from outside the district in that a potential conflict exists because employees of the ranch also must serve as school district trustees.

Our review of the school district providing education for the Yellowstone Boys Ranch showed that a number of students from Wyoming and several from North Dakota were being served in the special education program. We also

observed a number of Indian students placed by the U.S. Bureau of Prisons and/or the Bureau of Indian Affairs being served by the district. The estimated average student cost of special education per year was \$3,372 for fiscal year 1976-77 and \$4,448 for fiscal year 1977-78.

The school district clerk charges tuition for those students placed from out-of-state locations. However, the tuition charge does not equal the costs of services provided, but was established by the school board at \$550 per year. This was intended to be double the normal tuition charge which school districts are permitted to charge for students out-of-district, but within Montana. Cost was not considered when the rate was established.

The Montana special education statutes do not specifically address the question of collecting out-of-state tuition for out-of-state placements. However, the law (75-7809, R.C.M. 1947), provides for out-of-state tuition payments for Montana students placed in out-of-state special education programs. Generally, the cost of placing Montana students in out-of-state programs is expensive--in excess of \$1,200 per month. Montana school law (75-7318, R.C.M. 1947), regarding attendance and tuition, provides that the Superintendent of Public Instruction has the authority to execute a reciprocal tuition agreement with any state adjoining Montana. This statute also provides that a reciprocal tuition rate may be negotiated at a flat amount or an actual cost per pupil amount.

The Superintendent of Public Instruction negotiated reciprocal tuition agreements with the states of Wyoming and North Dakota. The tuition agreement for Wyoming was negotiated in September of 1969, and essentially provides for a reimbursement of the actual cost per pupil. The agreement with the state of North Dakota is for fiscal year 1977-78. It provides for a tuition rate of \$1,400 per school year for high school students and \$1,252 per school year for elementary students. Neither agreement considered special education costs. Although the agreement with Wyoming would be sufficient to cover the cost of special education, the \$550 annual billing rate the school district charges for out-of-state students is inadequate and does not recover the costs of education. The \$550 is double the 1965 inter-district tuition rate prescribed in the law. The amount was prescribed by the Yellowstone County Superintendent of Schools in June 1966.

In the instance of the Wyoming students, the school district should contact the Wyoming Superintendent of Public Instruction to obtain reimbursement for these students in accordance with the tuition agreement. There were nine students in the 1976-77 school year from Wyoming billed at the \$550 tuition rate and seven in the 1977-78 school year. Two of the out-of-state students in the 1977-78 school year are from North Dakota. It would appear appropriate that the Superintendent of Public Instruction should negotiate a

tuition agreement with North Dakota which reflects the costs of special education rather than regular education.

A somewhat similar situation relates to the payment of tuition for Indian students. We also identified that there were eight Indian students placed by either the U.S. Bureau of Prisons, U.S. Federal Probation Office, or the U.S. Bureau of Indian Affairs, into the Yellowstone Boys Ranch. The costs of room and board of attendance at the ranch is paid by those organizations. However, Montana pays the cost of education through the special education budget. The home school districts of these students receive some federal subsidies for Indian students. In those instances of placement by federal authorities, these federal subsidies should be paid to OPI as partial reimbursement of the state expenses at Yellowstone Boys Ranch, School District #58. The Montana Department of Institutions has, in fact, negotiated for reimbursement of educational costs for Indian students placed in several of its corrective institutions. The OPI should obtain special educational financial assistance from the Bureau of Indian Affairs or other federal authorities placing Indian students where state special education funds finance the program.

RECOMMENDATION

We recommend that:

1. Legislation be enacted to provide outside school board trustees for the Yellowstone Boys Ranch, School District #58.

2. The school district bill for the actual cost provided by the tuition agreement with the state of Wyoming.
3. The Office of Public Instruction:
 - a. Negotiate an agreement with the state of North Dakota for reimbursement of special education costs.
 - b. Determine if federal assistance is available for the education of those students placed from Indian reservations.

Examination of Special Education Expenditures

Our examination of the expenditure of special education funds by the school districts was designed to determine instances where special education funds were not spent in compliance with both the state law (Section 75-7813.1, R.C.M. 1947), and the Administrative Rules of Montana, Chapter 18, Title 48, Subchapter 30. Our examination of financial transactions occasionally required verification of regular education data, especially the calculation of the "average number belonging" (ANB). The examination of 32 school districts disclosed the questionable use of \$169,000 of state funds. This resulted from a variety of transactions which we attribute to inadequate reviews by Office of Public Instruction officials, improper expenditures by district officials, and improper calculations on reports submitted by district officials. In addition, while attempting to verify that full-time special education students were not being counted as regular education "average number belonging," we observed that one school district submitted

improper calculations for ANB reimbursement from the OPI. This caused overpayment to the school district totaling \$30,797 for fiscal year 1977-78. Section 75-6917(3), R.C.M. 1947, provides for the return of state equalization aid when over-payments occur. A discussion regarding categories of erroneous use of state funds with appropriate recommendations follows.

Separate Accounting for Special Education

We observed six school districts which had not developed separate accounting systems to enable an accounting for special education expenditures. The law (Section 75-6906, R.C.M. 1947) provides that special education support be from funds providing state equalization aid but that the funds must be accounted for separately. Most of the schools have prepared an expenditure report based on separate accounting for special education. However, several schools have not established a separate accounting system and consequently have to estimate expenditures except for two expense items included in the old general fund accounting system. These had been incorporated into the uniform accounting system prior to the 1974 law changing the funding support for special education.

In preparing estimates for the annual expenditure report for special education, one school district overstated the expenditure for teacher aides by \$12,252; for special education clerical staff by \$3,824; and understated the expenditure for special education support staff by \$4,272.

The net result of these erroneous estimates was an overstatement of expenditures totaling \$11,804. The school district retained this amount in its reserve fund for support of the subsequent year regular education program, although it properly should have been returned the money to the state earmarked revenue account.

Another school district double-reported \$3,026 for support staff salaries because of the estimating procedure. This district mistakenly recorded one month's salaries for three support staff in the general fund special education instructional salary account--the account was one of two which had existed in the general fund accounting system prior to the 1974 change in the law. At year end, when expenditures had to be estimated for the special education expenditure report, the district properly determined what its support staff salaries were, but neglected or overlooked the one month which had erroneously been charged to the special education instructional salary account. This amount was reported twice on separate lines on the expenditure report.

The law (Section 75-6906, R.C.M. 1947) is clear regarding a need to provide separate accounting for special education funds received from the state. Without the separation, there can be no assurance that special education funds were expended for their intended purposes--special education. Improper reporting of special education expenditures allows retention of these funds within the district for subsequent year support of regular education

programs. However, there is presently no penalty for inadequate accounting of special education expenditures. The Department of Community Affairs, Local Services Division, is responsible for the accounting system development and auditing of school districts.

RECOMMENDATION

We recommend that the Department of Community Affairs encourage all school districts to establish separate accounting for special education funds and report noncompliance in the school district audit report.

Shared Equipment Purchases

Many of the school districts followed the practice of using special education funds to purchase equipment which was common to both regular education and special education. This occurred in situations where special education either bore the entire cost or only a portion of the total cost of the program.

We observed one instance where the school district purchased a \$1,120 washer and dryer set which was placed in the athletic department. The same district purchased a \$272 vacuum cleaner for use in both the special and regular education rooms. This type of expenditure is provided for in the indirect cost allocation for maintenance and thus should not be provided as a direct cost.

Numerous other instances occurred where special education funds purchased equipment which was justified to some extent in support of special education. For example, one

school district used \$225 to assist in the purchase of a \$985 sewing machine. The machine was placed in the home economics room for the regular education program. The special education instructor had been using a sewing machine for one of the special education students in the previous year but was not currently using the machine. Another school district used \$200 to help pay for a \$350 manual duplicating machine that was primarily purchased for the school and used by all teachers. Another school district used \$400 of special education funds to help purchase an \$850 projector. The regional director of special education was unaware that the school had the projector. A final example of shared equipment is the purchase of \$1,100 of physical education equipment for a special education facility. Although initially purchased for special education, some of the equipment is now being used by the district's physical education director for the entire district.

Although some special education need may be met by most of the above items, it appears that the school districts will be using the equipment primarily for regular education. To avoid the possible supplanting of regular education funds with special education funds all shared equipment costs should be allocated in accordance with its use as specified in the regulations (Section 48-2.18(30)-S18510).

RECOMMENDATION

We recommend that school districts allocate shared equipment costs between regular and special education programs in accordance with the equipment's use.

Miscellaneous Expenditures

The audit disclosed numerous expenditures which were in violation of the allowable cost schedule prescribed by law (Section 75-7813.1, R.C.M. 1947). There generally was no pattern among the school districts to suggest any particular weakness except a lack of understanding by school district accounting personnel of the restrictive uses of special education funds. A number of the various improper expenditures are disclosed in this section primarily for the purpose of explaining improper uses of special education funds.

One of the more common erroneous charges was for out-of-district travel to special education conferences. The law (Section 75-7813.1, R.C.M. 1947), provides for itinerant travel between schools and districts and is silent about travel to conferences. The OPI has not approved out-of-district travel; three districts were unaware of this restriction and used special education funds for that purpose. Although currently prohibited, we believe properly controlled out-of-district travel to special education conferences could benefit the program.

Several districts used special education funds to pay for regular education extra curricular activities which the

special education teachers were either required or chose to participate in. It appears that these errors occurred because the payment for additional school activities was paid from the same fund that paid the teacher's salary. Unless extra activities are related to special education students, they do not fulfill special education purposes and are not allowable.

Payment for a full-time position was made when the OPI approved only a half-time position. The approved budget had sufficient funds to pay for the position but the OPI employs a position ceiling and so notifies each school district upon final approval of the budget. The payment for other than the positions approved requires separate approval which was not obtained.

There were several instances where statutory limitations were exceeded. This occurred when the school districts transferred unused budget authority from one line item into a restricted line item, which was already at a statutory maximum. These statutory maximums occur normally where the cost item is a calculated allowance as contrasted to actual costs. Expenditures in these categories cannot exceed the original budgeted amount. We noted that the school districts neglected to obtain budget amendment approval from the OPI before making these expenditures. State special education rules and regulations require such approval for contract expenditures and transfers from budget line items, which were not "excess" amounts.

Two districts overcharged actual insurance costs because of improper instructions given to accounting personnel. The insurance line item can be both an actual expense related to employee benefits and a calculated allowance which is paid without a separate accounting. The districts were charging the budget amount for employee benefits rather than actual incurred expenses.

In addition, we observed charges which related solely to regular education. The largest amount was for payment of a secretary's wages which continued six months after transferring from the special education position. The district neglected to change the funding source when the transfer occurred. There were also a number of instances where small expenditures were charged to special education but were for regular education.

In questioning the school district accounting personnel about the erroneous expenditures, we were generally advised that they did not understand the restrictions of the OPI special education rules and regulations. These school district officials were, in all instances, cooperative and interested in the correct procedures in charging special education. We were advised by several in the smaller districts that there had never been any training provided to the business personnel regarding accounting for special education expenditures. Subsequent to completion of most of our field work, the OPI special education unit initiated budget workshops covering the allowable costs, as well as

the limitations and restrictions on the use of special education funds. Considering the apparent lack of understanding of the state special education rules and regulations by district business personnel, it appears that familiarity with the OPI rules and regulations governing the use of special education funds would reduce the erroneous charges.

RECOMMENDATION

We recommend that the school district business personnel become familiar with the Office of Public Instruction's rules and regulations which limit and restrict the use of special education funds.

Erroneous Calculation of Average Number Belonging

School districts receive foundation and maximum budget without a vote support from the OPI based on pupil attendance for the previous year. This data is reported on the OPI form, "Pupil Data and School Term Report." Our principal interest in the calculation of the "Average Number Belonging" (ANB) was to verify that full-time special education students were not included in the count data used to obtain foundation support for the school district, i.e., a student whose education is 100 percent funded by special education should not receive duplicate support from another source.

The first noted deficiency relates to the OPI form for reporting ANB and full-time special education students. The form contains two inconsistencies with the law (Section 75-6902, R.C.M. 1947)--(1) the definition of a full-time

special education student, and (2) the inclusion of pupil instruction related days for calculating ANB. Regarding the definition of a full-time special education student, the law provides that a student who spends 50 percent or less of his classroom time in special education may be counted for regular ANB. The OPI form specifies that students who spend 50 percent or more of their classroom time in special education may not be counted as regular ANB. The inconsistency is that the cut-off for exclusion from regular ANB is more than 50 percent--not 50 percent. Some school districts commonly provide 50 percent of the classroom time in special education--this happens most often when the district's classroom time divides evenly by two. A school district which follows the OPI form rather than reading the law would deprive itself of ANB entitlement. The OPI should correct this inconsistency.

The other inconsistency involves a substantial amount of state foundation support. The law (Section 75-6902, R.C.M. 1947) describing the calculation of an ANB, defines an ANB as the average number of regularly enrolled full-time pupils attending the public schools of the district. In calculating this number, the law provides that the total aggregate days of attendance and the aggregate days of absence for full-time regularly enrolled students shall be divided by 180. The 180 represents the minimum number of days a school district must conduct school. All school

districts are instructed by the form to add "pupil instruction related" days to the total absences--thus increasing the total aggregate days. These pupil instruction related days normally number seven days during a school year. The effect of adding these days in the calculation is to increase state support of education by about 4 percent during the current biennium.

The law does not provide for adding these days in the calculation. OPI officials advised that these days are included because of a 1961 policy statement by the State Board of Education which directed the inclusion of pupil instruction related days. We have requested an Attorney General's opinion to clarify the propriety of including these days. (The Attorney General's opinion has subsequently been received and included as Appendix I, page 91.)

Generally, we experienced considerable difficulty in verifying or reconstructing the ANB calculation for high schools and junior high schools--the records were normally not retained in an order which facilitated audit once the calculation was made. In some instances the original documentation was destroyed and in others the data was refiled which made auditing these records impracticable. The law does not presently require retention of this data. Elementary school attendance was easier to verify because of the registers used and because students do not change classrooms each hour.

In attempting to verify the ANB and assure that double counting of full-time special education students did not

exist, we were able to complete the evaluation in only one instance at the junior high and high school level. In that instance, records were retained in a register form which substantiated the district's ANB calculation and indicate that full-time special education students were not included. Six other verification attempts at the junior high and high school levels were not successful because records were not maintained or retained to facilitate audit. In one instance, by using supplemental records we determined that one high school and junior high district was not determining ANB on the basis of actual attendance records. It was calculating ANB on the basis of beginning enrollment and new students added during the year. Analysis of available records showed that dropouts and transfers to other districts were not deleted from the calculations. On the basis of district records showing dates of dropouts and transfers we calculated that an excess of 48 ANB were reported to the OPI for foundation payments in fiscal year 1977-78. We explained the error to the district superintendent, who accepted our calculation after an extensive review of district records. The excess distribution of state funds for these 48 ANB totaled about \$30,800 during fiscal year 1977-78.

We noted three school districts which had erroneously included full-time special education students in the regular ANB calculation. In reviewing to determine possible double accounting as both special education and regular ANB, we

found that most school districts made a conscious effort to prevent duplication. Generally, this occurs through a procedure of notifying the principal to avoid counting a student in the ANB when his special education classroom time exceeds 50 percent.

One instance involved mistakenly including three full-time elementary special education students in the regular student register. It did not appear intentional because a number of other full-time special education students had been properly excluded. The excess state distribution during fiscal year 1977-78 for these three students was about \$1,350. Another school included 50 full-time special education students because they changed instructors each hour. However, all instructors were paid from special education funds. The school district offset this by not claiming \$19,000 in calculated allowable costs permitted by the law (Section 75-7818.1, R.C.M. 1947). However, the inclusion of 50 ANB when offset by \$19,000 still resulted in an excess distribution of \$13,500 to the school district.

The other instance of double counting involved different circumstances. The school district included about 20 ANB for an alternate school which was taught by instructors funded by special education. The school district had previously funded the alternate school from regular education funds but decided to use special education funds in the 1976-77 school year. Upon review of the ANB count for the school, we questioned school district officials about the

student evaluations to determine handicaps and eligibility for special education. Although a total of about 60 students had been taught for varying lengths of time during the year, only one student had been evaluated for special education. Rather than calculate the effect of the excess ANB, it appears more reasonable to deny the use of special education funds for the instructors. The costs applicable to personnel totaled about \$26,000 and should be refunded to the OPI since the students were not eligible.

The ANB calculations of the school districts are not audited by the OPI or the Department of Community Affairs, which normally audits school districts. Considering that ANB is the basis for distributing in excess of \$100,000,000 annually from the school foundation program, audits should be required. School district records necessary to enable post-audit must be retained unless destruction is approved by the Department of Community Affairs (Section 59-514(2), R.C.M. 1947). Logically, the Department of Community Affairs should perform an audit of ANB in conjunction with its regular financial audit of the school district. However, this department would have to have access to special education student names that are now confidential. This should be agreeable to the school districts as long as the names were protected by law from being disclosed.

RECOMMENDATION

We recommend that the Department of Community Affairs require retention of attendance records in a fashion that will permit an

audit of the ANB calculation, and audit the ANB calculations on a test basis for each school district.

Support of Regular Education

The consulting psychologist, with whom we contracted to evaluate psychological services in selected school districts, made the observation that school psychologists funded from special education were used in support of regular education responsibilities. The consulting psychologist commented that "State special education monies for psychological services are definitely also being used for children in regular education beyond the purposes of screening and evaluation for special education programs. These practices are not extreme, but they vary greatly among districts and seem to occur more frequently in larger districts that have more psychologists." We observed that one school district followed the practice of funding psychologists 95 percent from special education and 5 percent from regular education to pay costs associated with providing psychologists in regular education.

The use of psychological services in support of regular education occurred when an evaluation was performed which showed the student was not eligible for placement in a special education program. In some of those instances it was believed the student needed additional psychological assistance and rather than reject a needy student, assistance was given. The special education assistance through

the evaluation stage is a justifiable use of special education funds. However, any assistance beyond that for students determined ineligible is the responsibility of the school district and an improper charge to special education. While it is not known exactly how much time school psychologists spend for regular education, the school districts should develop appropriate sharing statistics to provide for the proper allocation of school psychologists' costs.

RECOMMENDATION

We recommend that the school districts determine the extent that school psychologists are used for regular education responsibilities and provide for appropriate cost sharing in the budget process.

Chapter III

FINANCING OF SPECIAL EDUCATION

Initially the financing of special education programs in the school district was through the Foundation Program. Under the Foundation Program, state funds are distributed to school districts on the basis of a student count--the average number belonging (ANB), determined by counting the students in attendance during a school year. In regular education the school district receives one ANB for each student that had attended the previous year. Funding of special education classrooms, by law, was on the basis of ANB but allowed for a multiplication of ANB due to higher costs of special education. We have been advised by OPI officials that the early funding system was designed as a partial incentive to school districts to establish a special education program. Consequently, the districts received more money than necessary to operate special education classes. For example, a mentally retarded or physically handicapped class of seven or more children entitled the district to 45 ANB. Based on the current funding levels, this represented about twice the average cost of operating a special education classroom.

Major revisions to the special education laws occurred during the 1974 legislative session. These revisions changed the system of state assistance and expanded special education to include educationally handicapped persons.

This category could generally be referred to as the currently eligible handicaps of learning disabled and emotionally disturbed. An educationally handicapped person's disorders specifically excluded learning disabilities resulting from visual acuity, hearing impairment, physical handicap, cultural, or instructional factors and mental retardation.

The 1974 revisions effected the state assistance for special education by deleting the ANB support provision and enacting an allowable cost schedule. This consisted of allowing the direct payment for salaries and supplies involved in the providing of special education and the payment of indirect costs such as administrative salaries of persons not involved in special education, a portion of the library services, a portion of operating and maintenance costs, a portion of insurance and other indirect cost items involved in operating a school system. Essentially this system required that each school district prepare a budget much in the same fashion that it does for its regular education program and submit it to the OPI for approval. The specific allowable cost items are enumerated in Section 75-7813.1, R.C.M. 1947.

The 1977 legislature amended the special education laws to essentially conform with Public Law, 94-142, enacted by Congress in 1975. The 1977 amendments to the Montana special education law provided more specific definitions of handicapped children who could be served and further limited

the discretionary authority that school districts would have in establishing programs. Montana law (Section 75-7805, R.C.M. 1947) now specifically provides that all handicapped children in Montana are entitled to a free, appropriate public education provided in the least restrictive alternative setting. The law further states that after September 1977, the board of trustees of every school district must provide or establish and maintain a special education program for every person defined as handicapped between the ages of 6 and 18 inclusive. After September 1, 1980, such services shall be mandatory for handicapped children between the ages of 3 and 21 inclusive. There are a number of school districts already providing preschool special education classes to handicapped children between the ages of 3 and 6. The 1977 revision further eliminated the need for parents of four or more children to petition for special education programs. Currently, (Section 75-7808, R.C.M. 1947) a single parent has the ability to request the establishment of a needed special education program.

Although Montana has been a leader in special education legislation, the 1975 federal statute imposed additional requirements upon the state. The federal statute, Public Law 94-142, contains definitions of handicapped children to be served and procedures to be followed in the evaluation and development of education programs for such children. The statute further provided federal assistance to the state and school districts for educating handicapped children. In

order to receive these federal dollars, the state was required to amend its statutes, promulgate rules and regulations which complied with the federal requirements, and submit a state plan to the U.S. Department of Health, Education and Welfare for approval. In amending its laws in 1977, and in the promulgation of state rules and regulations, the state of Montana has become eligible for federal dollars. The OPI has submitted the state plan and it has been approved. These changes were made to assure federal assistance, as well as to promote consistency in special education programs throughout the state. The changes guarantee access for handicapped children to appropriate educational services. Currently, the federal share of special education funding amounts to 3 percent of the total support.

Section 612 of Public Law 94-142 specifies that financial assistance will be provided to the states on the basis of the number of special education handicapped students identified as being served with special services as of October 1, and February 1 in the prior school year. This statute provides for a gradual increase in the amount of the assistance over the next five years. This assistance is to be based on a percentage of the average per pupil expenditure in public elementary and secondary schools in the United States. Projected federal assistance to Montana, assuming 11,465 students as identified at February 1, 1978 and inflation at 7.38 percent annually, is as follows:

**Projected Federal Assistance
To Montana Under P.L. 94-142**

<u>Year</u>	<u>Percent of Education Costs</u>	<u>Amount**</u>
1977-78	*	\$ 720,000
1978-79	10	1,827,500
1979-80	20	3,925,600
1980-81	30	6,321,800
1981-82	40	9,052,800

*Flat amount not less than federal assistance received in the prior fiscal year.

**Subject to appropriations by congress.

Source: Compiled by the Office of the Legislative Auditor considering average cost of education country-wide of \$1594 per student for 1976-77 and inflation at 7.38 percent annually.

Illustration 3-1

The state received \$720,000 in assistance for fiscal year 1976-77. The same amount was received in fiscal year 1977-78 because of a protection clause in the law which assured that no state would receive less than prior allocations.

The federal assistance extended to the states under Public Law 94-142 is generally limited to new programs for which there is no state money available--federal funds cannot be used to supplant existing funds. This limitation presents a difficult distribution question for the state since state funds are available for any required special

education need. The state can obtain a waiver of the requirement regarding nonsupplanting from the U.S. Department of Health, Education, and Welfare to enable supplanting of state funds. Obtaining such a waiver requires filing a petition with the department citing specific data, supposedly the most important factor being that all eligible children are receiving appropriate special education services. OPI special education officials suggest that Montana could be the first state to be granted such a waiver. This is because the state law requires that special education be made available to all handicapped students and the 100 percent financing of local programs has been conducive to meeting that requirement. OPI believes all school districts are providing special services to all eligible children; thus, the state may qualify for the waiver. However, OPI has not yet requested a waiver.

Current State Support of Special Education

The state of Montana supports the school districts that have implemented special education programs by funding 100 percent of the additional costs of providing special education services plus a number of indirect costs which do not directly affect the special education programs. The state does not generally finance the cost of providing facilities for special education classrooms. After the counties levy the mandatory property taxes, and the school districts use the maximum permissive property tax levies, the state adds the individual special education budgets to the regular

education programs. Special education is then funded from the earmarked revenue account and any necessary legislative appropriations as part of the foundation program and the maximum budget without a vote. An exception to the 100 percent state support of additional costs of special education classes occurs when school districts fail to use the full permissive levy. Within the complexities of funding the foundation program and the maximum budget without a vote, any district which does not use its permissive levy, automatically pays for 20 percent of any special education program costs. According to OPI officials, 58 districts which did not use their maximum permissive levies paid \$215,000 for special education during fiscal year 1977-78. The remainder was paid by the state.

Illustration 3-2 shows the state distribution of special education funds to the school districts since fiscal year 1970-71.

The use of the foundation program and maximum budget without a vote to provide financial support for special education in Montana has eliminated legislative fiscal control over state distributions to the school districts. Each legislative session the legislature appropriates general fund monies to support the foundation program and the maximum budget without a vote. The maximum support for the regular education programs is controlled by establishing the amount of financial support the state will provide school

DISTRIBUTION OF SPECIAL EDUCATION FUNDS TO SCHOOL DISTRICTS BY FISCAL YEAR

<u>Fiscal Year</u>	<u>Approved Budget</u>	<u>State Distributions</u>
1970-71		\$ 4,465,808
1971-72		5,676,340
1972-73		Not Available
1973-74		10,115,524
1974-75	\$ 13,446,000 (Est.)	13,446,000
1975-76	17,832,000	16,515,978 *
1976-77	20,703,000	18,814,673 *
1977-78	24,328,000	22,272,491 *
1978-79	28,339,899	Unknown

*The distributions are reduced by prior year unspent special education funds.

Source: Compiled by the Office of the Legislative Auditor from data provided by the Office of Public Instruction and data contained in the Interim Study Report by the Joint Committee on Education, Special Education for the Handicapped, December 1973, Montana Legislative Council.

Illustration 3 2

districts for each student in attendance (Section 75-6905, R.C.M. 1947). This procedure effectively limits the distribution of state funds for regular education. However, no such limitation exists for state funding of special education. Illustration 3-3 shows the state procedure for funding both regular and special education.

Montana Elementary School District Budget

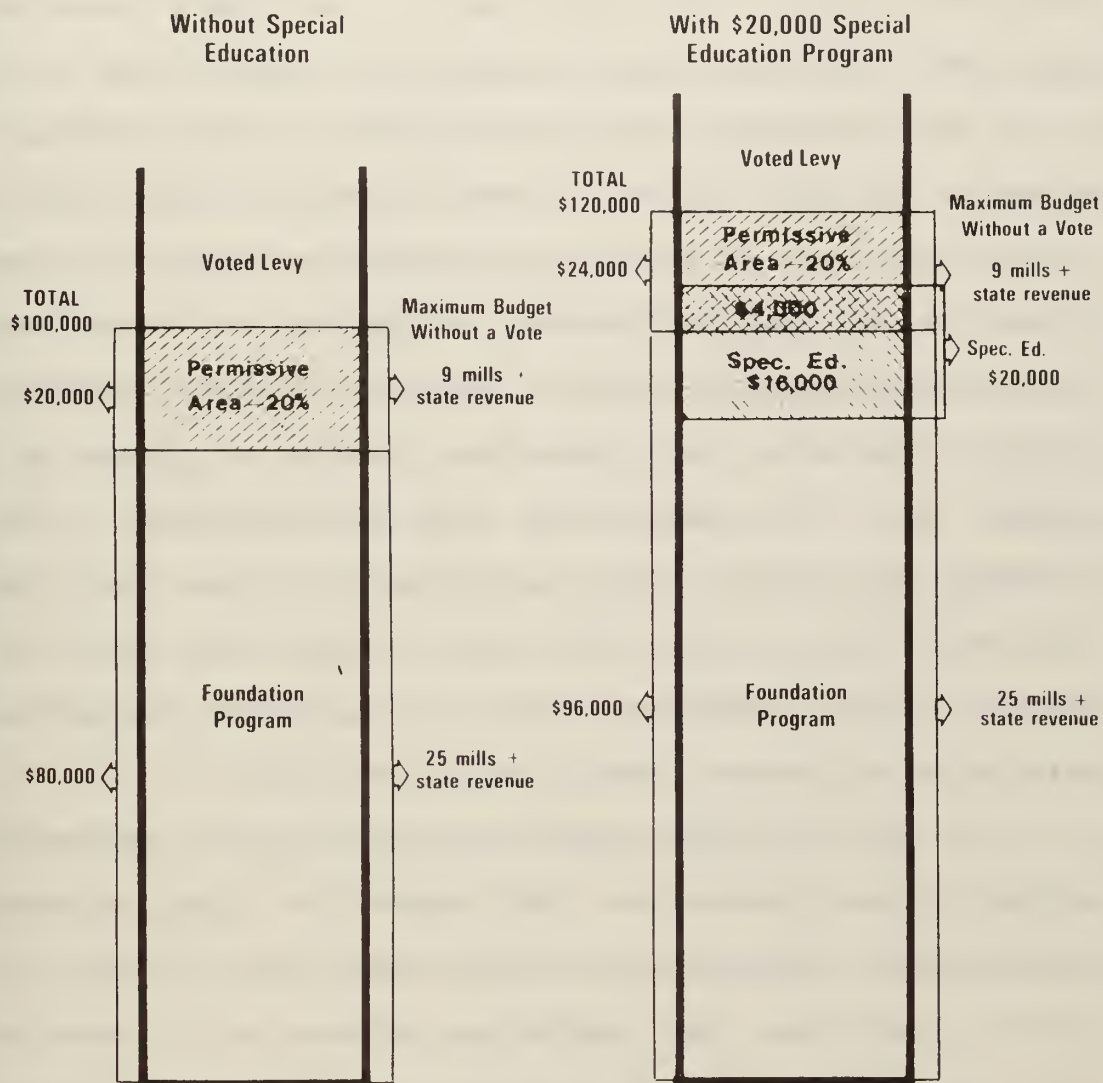


Figure 1

Figure 2

NOTE:

A state-wide property tax may be levied for a deficiency in either the Foundation Program or the state share of the permissive amount if school district requirements exceed funds available in the earmarked revenue account.

Source: Office of Public Instruction
Illustration 3 3

The illustration shows two instances of potential deficiency levies--for the foundation program and the permissive aid. The state is required by law (Sections 75-6921 and 6922, R.C.M. 1947) to support the school districts at specified levels. Any deficiency of available funds in the earmarked revenue account needed to support the specified level of education requires the state to impose a state-wide property tax levy on all taxable property. Since the legislature does not establish a spending limitation for special education and because funding is through the foundation and the maximum budget without a vote, the school districts can create situations that cause the state to impose a deficiency levy. The deficiency levy is initiated by the Department of Revenue under provisions of law (Sections 75-6921 and 6922, R.C.M. 1947) which require the state to meet school district funding needs for specified foundation and permissive aid levels (See Illustration 3-3).

The typical limitations of state funding imposed by the appropriation process do not exist for special education expenditures. Although the legislature does not set a total dollar limitation for regulation education, it does establish the "maximum budget without a vote" for each student in attendance and will provide state aid only up to that limitation. Any district creating education programs costing in excess of that level must do so by a voted levy.

Illustration 3-4 is presented to show the total state support provided during school year 1977-78. The illustration shows the source of funding and the distributions in the foundation and permissive areas, including that for special education.

During the last legislative session, the legislature appropriated \$72,700,000 from the general fund for public school support during the 1977-1979 biennium. This appropriation was intended to make-up the estimated cost of state responsibilities for the foundation and the maximum budget without a vote. Although special education is not set out separately as a line item appropriation in the appropriation bill, the estimated cost was considered by the legislature. We questioned OPI officials and the Legislative Fiscal Analyst to ascertain the estimated special education cost and could determine only that increases were projected at 7 to 7.25 percent over the budget for fiscal year 1976-77. Assuming the higher percentage, the estimate for the biennium would be \$46,062,000. The actual budgets approved by the OPI total \$52,668,000 for the biennium, about \$6,606,000 greater than anticipated. The approved special education budget increased 17.4 percent the first year and 16.5 percent the second year. Since the legislature does not limit the appropriation for support of the special education program, the school districts are not required to stay within the estimates considered by the legislature.

Montana Foundation and Permissive
Support to School Districts

Actual Collections 1977-78

Foundation Program

State General Fund Appropriation		\$28,620,000
Earmarked Revenue		
Personal Income Tax	\$ 30,905,200	
Corporate License Tax	7,309,693	
U.S. Oil & Gas Royalties	4,426,414	
Interest and Income - State Lands	14,854,923	
Coal Severance Tax	2,810,392	
Coal Severance Tax Interest	348,669	
County Surplus	4,231,991	
Special Education Reversion	2,055,762	66,943,044
Total Foundation Funding		<u>\$95,763,044</u>

Permissive Program

Balance	\$ 92,892
Transfer from Earmarked Revenue	3,439,786
Revenue Sharing	8,100,000
State General Fund Appropriation	6,110,000
Deficiency Tax Levy - Elementary	829,965
Deficiency Tax Levy - High School	474,497
Total Permissive Funding	<u>\$19,047,140</u>

Percent of Funding Source

Foundation Program

State Equalization (80% Special Education)	62.4
County Equalization	37.1

Permissive Program

District Share (20% Special Education)	51.6
County Share	48.4

Source: Compiled by the Office of the Legislative Auditor from data provided by the Office of Public Instruction.

Illustration 3-4

The actual approved budget for the school districts during the first year of the biennium exceeded the legislative estimate by \$2,103,000. This unanticipated increase caused a state-wide deficiency levy for school year 1977-78. The OPI required an additional \$2,062,000 to pay the full amount of the state permissive share. The deficiency levy was lower than required and generated a total of \$1,304,462 as shown in Illustration 3-4. The OPI recently estimates that a deficiency levy of \$6,485,000 is necessary during fiscal year 1978-79 for the foundation program. The higher special education budgets contributed substantially to this deficiency levy.

School District Budgets

Montana law (Section 75-7813.1, R.C.M. 1947) specifically provides that certain allowable costs shall be permitted in support of a school district's budget. These allowable costs can be categorized into direct and indirect costs. Direct costs would include such items as salaries of persons directly involved in providing special education to the pupils, directly administering special education programs, and directly involved in the evaluation and placement of the students. They also include supplies which are specifically in the support of the special education program, employee benefits directly related to salaries paid, and specific equipment or modifications to buildings to assist the physically handicapped. Essentially these direct costs relate to an identifiable cost which contributes directly to the education program for a handicapped child.

The indirect costs which are allowed by the law in a proportionate or percentage relationship in the special education budget are as follows:

- Superintendent's salary;
- Administrative and clerical salaries of the school district;
- Administrative supplies for the school district;
- Principals' salaries;
- Shared instructional supplies;
- Library salaries, books and periodicals and other expenses;
- Plant operations and maintenance;
- Food service costs for full-time special education students.

Illustration 3-5 is a compilation of the statewide special education budgets for all school districts for fiscal year 1977-78. The illustration shows the direct and indirect cost allowance categories and the amount of money provided to the districts on a statewide basis.

In accounting for the itemized allowable costs, each school is required to have an accounting system which accumulates costs related to the direct cost allowances. No requirement exists for separate accounting for the indirect cost allowance--the indirect cost allowances are calculated in determining the budget and that amount is reported as expended on the special education annual expenditure report.

Montana School District
Special Education Budgets
Fiscal Year 1977-78

Allowable Costs

<u>Direct Costs</u>	<u>Amount</u>
Special education aide salaries	\$ 1,479,180
Special education teachers and clinicians salaries	11,523,912
Special education travel-mileage	138,686
Tutorial salaries	188,820
Special education employee benefits:	
Social Security	899,409
Teacher Retirement	858,011
Public Employee Retirement	102,670
Unemployment Compensation	63,803
Special education instructional supplies	366,100
Special education support salaries	1,710,243
Special education support clerical salaries	382,150
Support service travel-mileage	44,382
Special education room and board	353,226
Contracted services (special education)	1,680,598
Interest on Warrants	1,077
Total Direct Costs	<u>\$19,792,267</u>

Combined Direct and Indirect Costs

Insurance (special education teachers and shared building)	\$ 947,386
Textbooks	105,406
Other expenses (special education & regular education)	102,332
Major special education equipment	242,135
Shared remodeling and remodeling for the handicapped	44,235
Total Combined Costs	<u>\$ 1,441,494</u>

Indirect Costs

Administrative salaries	\$ 305,547
Administrative clerical salaries	29,164
Administrative supplies	16,125
Principal salaries	216,527
School clerical salaries	75,369
Library salaries	47,594
Library books and periodicals	14,531
Library Other expenses	5,052
Shared instructional supplies	67,057
Operation of plant	1,514,173
Maintenance of plant	562,609
School food services	13,684
Student body salaries and other expenses	41,946
Capital outlay-share sites	8,389
Capital outlay-shared buildings	20,289
Capital outlay-general remodeling	23,825
Rental of land and buildings shared	68,335
Other Expenses	8,691
Total Indirect Costs	<u>\$ 3,038,907</u>
Previously approved emergency budget	<u>55,585</u>
TOTAL Amount Approved	<u>\$24,328,253</u>

Source: Compiled by Office of the Legislative Auditor.

Illustration 3-5

There are two ways of allocating funds in support of new programs added to an already operating education system. The first is payment of direct costs for providing the service and payment of a percentage of indirect costs incurred for the existing education system. The percentage for indirect cost allocation can be determined on a number of bases--number of special education students to total students, number of special education teachers to total teachers, or the number of special education classrooms to total classrooms. Each of these relationships are prescribed by law for specific cost items and are used by OPI for allocating funds in support of indirect costs to the school districts. The federal government uses similar methods in allowing indirect costs in some of its grant programs.

The other method of allocating funds is the payment of only the additional costs of providing the service. This allocation is based on the concept that indirect costs of the existing education system will continue at the same rate regardless of the addition of a new program. Further, the decision to add a new program will generally relate to only the additional costs to the system--not the direct cost plus already incurred indirect costs of another program.

Although the method prescribed by statute (Section 75-7813.1, R.C.M. 1947), is a proper system for supporting special education in the state, an unfavorable effect is that the indirect cost allowances supplant expenses of the

regular education program. These costs would continue regardless of the existence of a special education program. Further, there is generally an absence of additional cost impact to these areas when a special education program is initiated. To illustrate this, the administrative cost totaling \$305,547 for superintendents' salaries does not increase in the school district because special education is implemented. Section 75-7813.1, R.C.M. 1947, allows a school district to receive a portion of the salaries for initiating special education programs.

Another example of indirect costs which do not usually increase with the addition of special education are the allowances for operation and maintenance of plant. These two allowances are calculated on the basis of total special education classrooms to the total classrooms in the school system. The total statewide budget for this in the special education budget was \$2,076,782. Most of these schools are heated by a central heating plant and the actual operation and maintenance relative to the special education classrooms does not increase because there is a special education class being conducted in those rooms. We found that often the rooms being used are space designed essentially for purposes other than education, i.e., teacher lounges, nursing rooms, or supply rooms. We also found that space in hallways was designated for special education use.

In addition to the above, a number of the indirect costs allowed in the budget are based on, and received as,

ANB calculations for full-time special education students--under the regular ANB program the state shares in a portion of these costs by distribution of the foundation moneys to the district for a portion of the education costs of that student. For example, library service expenses are determined by dividing those allowable costs by the total number of students in the school system. This cost per regular student then is allowed for each full-time special education student. This is done on the premise that full-time special education students are not counted in the regular ANB, and provides reimbursement to the district for foundation support it would ordinarily get. However, these costs are not associated with educating full-time special education students--these students probably will not use library services. Shared instructional supplies is another example of indirect cost allowance calculated on the same basis. Since a direct cost allowance exists for these items, the instructional supplies for handicapped students are purchased directly with special education funds.

These indirect allowable costs totaled \$3,038,907 for fiscal year 1977-78, plus an additional amount which cannot be readily identified in those cost allowance categories which are combinations of direct and indirect. Under the present special education financing system, the state has chosen to relieve the districts of this basic educational responsibility for full-time special education students.

This varies for less than full-time special education students that are mainstreamed into the regular classes for those subjects for which they have adequate academic abilities. In these instances, the state provides for the additional costs incurred outside of the regular classrooms.

Budget Analysis

School district budgeting for special education is an annual process. The districts begin their budgeting early each year. The Montana special education rules and regulations require that the local school districts submit budgets to the OPI on or before March 1 of each year. These same rules and regulations require the Office of Public Instruction to return approved budget authority to the school districts by the following April 1--a month period for budget analysis. We observed circumstances which suggest that the OPI budget analysis could be more effective; the most obvious being the return of large amounts of unspent budget authority. School districts reported a total of \$2,055,000 to the OPI of unused budget authority granted for fiscal year 1976-77. One of the larger districts reported a total of \$670,000 of unexpended state funds--almost 20 percent of the total budget.

During our audit we observed what we considered excessive staffing in comparison to student caseload. Early in the school year we observed teacher workloads which were less than the minimum prescribed for establishing programs. This situation would continue until students were identified

as being handicapped. Further, we observed instances where school districts split classes with teachers and aides at less than the maximum student workload, but at the minimum specified in the special education rules and regulations reference manual. According to an OPI official, the minimum student caseloads were not intended to allow large school districts to unnecessarily increase teachers and classrooms, but were set low specifically to enable small districts to start special education programs. In contrast, some of the larger districts seem to use the low minimum to expand the number of classrooms, even though it was intended that they would have larger numbers in the classrooms.

Another instance where less than maximum student caseloads were observed relates to alternative schools funded with special education money. An alternative school serves students who dropout or refuse to attend the regular high school programs. These schools are an alternative to the recommended regular program for students who probably would not complete high school if required to attend the regular high school program. In one school most of the students were classified as emotionally disturbed--probably mild handicaps since none were clinically diagnosed as emotionally disturbed. There were about 15 students enrolled in the program being served by a counselor who coordinated the program, a half-time secretary, and two full-time teachers. This suggests a student caseload less than the Montana maximum caseload of 12 emotionally disturbed students per

teacher. We were advised that the local board has subsequently dropped one of the full-time teaching positions. Another alternative school utilized staffing with caseloads of about six students per teacher.

We also discovered several incorrect budget calculations for indirect costs which allowed the districts funding without specific accountability--the indirect costs calculated for budget purposes are automatically reported as expenditures at the amount approved by the OPI. An example of an erroneous calculated allocation of insurance costs occurred when a school district applied the designated percentage to the total insurance expense of the district. Special education rules and regulations provide specifically that this calculation applies only to the liability insurance and that health insurance costs for district employees are to be excluded. Because of this erroneous calculation, the school district received a total of \$15,905 more than should have been provided for two fiscal years--1976-77 and 1977-78. Another school district made multiplication errors for two fiscal years and rounded a percentage upward from 7.7 to 8 percent. The effect of these actions on the building operation, maintenance, and insurance allowances was an overpayment of \$6,399. In addition, the school district claimed \$13,400 for rental of facilities rented after fiscal year 1974-75--a grandfather clause for those districts which had rented facilities under the previous financing systems. Under this section, special exemptions can be granted by

OPI. However, this exemption was not requested nor was the need for exemption recognized by OPI.

The OPI approved a budget expenditure item which was contrary to specific provisions of the allowable cost schedule in the law (Section 75-7813.1, R.C.M. 1947). In the one instance the budget approval for one school district included actual expenses for operation and maintenance costs while the law and the state rules and regulations provide for only pro-rata costs. By permitting the school district actual expenses, the allowance paid was \$34,000 more than provided by law. These actual costs were approved because the building was entirely special education and not shared with regular education. The OPI special education officials advised that this budget item for the school district involved has been corrected in the current year budget to conform with provisions of the law.

A more intensive budget analysis by OPI should have revealed the above improper allowances in the budgeting process. During these years, the budget analysis was done by OPI with assistance from regional center personnel. During fiscal year 1977-78 there were 255 budgets submitted to the Office of Public Instruction for \$24,328,000. The OPI currently utilizes four staff members to perform the function of budget analysis and approval. At best, the one month time frame allowed for approval is inadequate and the four employees cannot perform a thorough analysis.

Montana statutes do not specifically provide that the state will fund special education programs for 100 percent of the school district's costs. However, analysis of the allowable cost schedule (Section 75-7813.1, R.C.M. 1947) indicates that the various expenses of special education are totally funded by the state. Since the local school district does not incur any costs for a program which they are required to establish, the fiscal responsibility normally associated with the budgeting process at the local district is somewhat lessened. The main expense to a school district starting a special education program is in providing facilities.

The absence of strict fiscal responsibility was observed in several ways during our review at the school districts. Normal budgeting for regular education is based on identified students and known workload. In regular education additional classrooms are not provided until an absolute identified need exists. School district budgeting for special education differs in the sense that teachers and classrooms are provided without specifically identifying the workload.

OPI special education officials advise that teaching positions are not approved unless handicapped children are identified. However, our audit showed that workloads were not identified. The OPI budgeting process does not enable the staff to visit the districts to verify the student workload presented in the school district budget requests.

The present system of funding virtually precludes effective budgetary controls by the OPI. The school districts, by law (Section 75-7806, R.C.M. 1947), are responsible for providing special education to identified students with special needs. The state, by law (Section 75-7813.1, R.C.M. 1947), provides the necessary funding but requires OPI staff to approve the budget requests of each district. Refusal of requested budget authority is extremely difficult because the districts are in the best position to know what special education programs are necessary and have the statutory responsibility to provide services. We have been advised by an OPI official that school districts question his authority to deny a budget request. This is based on the fact that the law provides a responsibility to the district to meet special education needs and the state is mandated to fund the programs. In contrast to budget limitations by OPI, one school district official said they were often encouraged to start new programs in compliance with the state law. This is not inconsistent with the OPI responsibility to ensure delivery of appropriate special educational services where needs are determined. Analysis of budget approval actions for the fiscal year 1977-78 school year showed 35 budgets with no change, 77 budgets with increases, and 126 budgets with decreases. The net effect from the original school district requests was an increase of about \$75,000. The total approved budgets for fiscal year 1977-78 was \$24,328,000. The budget approval

actions for fiscal year 1978-79 showed 49 budgets which remained the same as requested, 19 budgets which were increased, and 189 budgets which were decreased. The net effect of the budget review and approval process was a decrease of about \$386,000 from the original budget requests. The total approved budget for fiscal year 1978-79 was \$28,339,899.

The present system of funding special education lacks normal fiscal restraint which generally exists for government spending. The 100 percent state funding of a local education responsibility removes the fiscal restraint imposed by local tax burdens which school boards generally must consider when setting budgets. OPI officials advise that additional staff for the next biennium has been requested to assist in budget monitoring. However, with the local districts responsible for determining and providing education needs, it is questionable whether OPI could provide effective budget analysis and deny requested funding even with additional staff.

Alternative Financing Systems

Montana uses a financing system which provides for prior approval of school district budgets for program costs necessary to serve identifiable handicapped children. A 1976 discussion paper¹ indicated Montana was one of five states which used a system of prior approval of costs.

¹ Funding Alternatives for Special Education in Connecticut, Les Horvath, October 1976.

Other systems identified are: (1) weighted per pupil allocations--13 states; (2) fixed sum per unit of instruction--6 states; (3) straight sum allocations based on child count by category--2 states; (4) personnel reimbursement in specific amounts for staff--9 states; and (5) excess cost of educating handicapped children--12 states. Some of these systems rely on student counts and the allocation of predetermined amounts. Another variation is that some are reimbursed upon completion of the year and some distribute financing prior to expenditure.

The system of prior approval has been explained in preceding sections of this chapter. This system relies on a budget analysis process similar to the Montana process, and payment of a percentage of estimated costs of approved programs. The weighted per pupil system of allocation relies on predetermined identification of the cost of providing special education to each eligible handicap. School districts receive financing based on identified handicapped students, but at different levels for each type of handicap--the more costly handicaps receive larger amounts. Such a system recognizes the types of handicaps experienced by each school district but does not require budget analysis for approval of district expenditures. The straight sum financing system is similar to the weighted per pupil method in that it relies on student counts and predetermined amounts. Although it does not necessarily recognize the different

education costs required for the various handicaps and the severity of handicaps, it may.

The system of allocation for each unit of instruction is based on establishment of a classroom. Often the case-load is prescribed for the unit. A fixed predetermined amount is distributed for each qualifying unit of instruction. The reimbursement may cover instruction, administration, and transportation. The personnel reimbursement method provides specific amounts for staff employed to provide or assist in special education programs. The reimbursement can relate only to personnel costs, or may include other costs associated with education. These methods of finance allocation do not require budget analysis.

The excess cost method of allocating financial assistance to school districts considers the average cost per pupil in regular education in relation to the average cost per pupil in special education. The excess cost is determined by deducting the average regular education cost per pupil from the average special education cost per pupil. Normally, a percent of this excess cost is reimbursed to the school districts. This method thus requires the school districts to bear the normal costs of education.

An additional variation which several states have used to limit state distributions to school districts is through specific appropriations for special education. These states then support distributions in accordance with the prescribed formula until appropriated funds are depleted. A ceiling

imposed by legislative appropriation may require a proration of available funds at a level lower than prescribed by the formula because school districts' special education programs may exceed levels anticipated by the legislature.

The above discussion suggests a varying percentage of state contribution to local education agencies in support of special education. A 1977 publication by the National Association of State Directors of Special Education identified the percent of contribution of 29 states to school districts in support of special education programs. Illustration 3-6 shows participation by these states.

Data was not available for 20 other states. The range of participation as shown in the state profiles publication is from 23 percent to 100 percent. Hawaii is the only state listed that provides 100 percent support of special education programs. However, Hawaii's percentage is different in that all education is provided under a state administered education system. Another state, Alaska, is very close with a 98 percent participation. The Montana participation rate is 100 percent of the cost of special education programs except for districts which do not use their maximum permissive levies. Of the \$24,328,000 special education budget for fiscal year 1977-78, \$215,000 was paid by school districts.

Percent of States' Participation
Providing Special Education Assistance
to Local Education Agencies

<u>State</u>	<u>Percent of Participation</u>
1. South Dakota	23
2. Oregon	30
3. Rhode Island	37
4. Virginia	40
5. Wyoming	45
6. California	50
7. Nebraska	50
8. New Jersey	50
9. Oklahoma	50
10. Wisconsin	50
11. Colorado	52
12. Arizona	55
13. Louisiana	58
14. Kentucky	59
15. North Dakota	60
16. Pennsylvania	60
17. Florida	63
18. Massachusetts	65
19. Minnesota	65
20. Connecticut	66
21. Delaware	70
22. Indiana	70
23. Utah	70
24. Michigan	75
25. Texas	80
26. Georgia	85
27. Idaho	88
28. Alaska	98
29. Hawaii	100

Source: State Profiles in Special Education, National Association of State Directors of Special Education, 1977.

Illustration 3-6

SUMMARY

The present state system of financing special education programs in the school districts has been conducive to establishment of special education for meeting the needs of handicapped children, but seemingly at the expense of effective fiscal control. The legislative fiscal control which exists for distribution of state funds in support of regular education programs is not present for the special education program.

Based on the disclosures of our audit, we believe an alternative system of financing special education within the state is necessary and would eliminate some of the problems observed. In Chapter II we discussed numerous instances where the school districts had spent special education funds contrary to restrictive provisions of the OPI rules and regulations. Continuation of the present system of allowable costs requires a continual audit effort to assure compliance with applicable laws.

In addition, in this chapter we have commented about deficiencies in the budget analysis process. These included instances where OPI budget analysis failed to disclose improper requests from the school districts, and where school district staffing patterns appeared excessive in relation to identified handicapped children. The budget analysis process was hampered by the short time frame available for budget approval, a limited number of OPI staff, and a complex budget system requiring prior approval.

An overriding factor which influences effectiveness of OPI budget control relates to the dual responsibility existent in the system. The OPI is designated as having approval authority for both budgets and special education programs, and responsibility for funding special education in the districts. However, the local school districts have the ultimate responsibility for meeting the educational needs of handicapped children. The districts are in a better position to determine needed programs and apparently question the right of OPI to deny requests to fund those identified needs. The fact that the state is required to fund 100 percent of the local district special education programs further compounds the budgeting problem. The normal incentive of local tax burdens influence on the board of trustees is nonexistent for special education budgeting and thus substantially reduces local fiscal responsibility. Most states require local participation in the funding of special education programs.

There are alternative financing systems available which would eliminate the need for budget analysis and prior approval by OPI, and which would restore fiscal responsibility to the local districts. The weighted per pupil allocation or other comparable system based on identified handicapped children would meet the individual needs of the Montana school districts but would eliminate the need for prior approval and analysis of budgets at the state level. The distribution of predetermined amounts for each student would

also provide legislative control similar to that exercised over regular education programs and assure a closer evaluation of special education programs by local school boards--programs costing in excess of those available from state funding would be at the expense of the local taxpayers. Use of such an alternative does not necessarily mean that state support of education would be less than the present levels since the legislature would have the flexibility of increasing state distributions of amounts for both regular ANB and special education.

The OPI has recently developed a cost identification system which shows the cost of providing service to each type of eligible handicap. The implementation of a weighted per pupil or other similar system should be strengthened by periodic monitoring of district costs to determine propriety of allocations per handicapped student, and of district child placements to assure propriety of child counts. Deletion of the budget analysis associated with prior approval of allowable costs should free OPI staff for the above and other monitoring needs (discussed in Chapter IV).

In conclusion, we believe that a more effective, and less burdensome, system of allocating special education finances to the school districts is necessary. Further, we believe the new system should incorporate local participation to enhance fiscal responsibility.

RECOMMENDATION

We recommend that legislation be enacted which would:

1. Change the funding distribution formula to a weighted per pupil or similar system.
2. Require a percentage of funding participation by local school districts.

Chapter IV

SUPERVISION BY OFFICE OF PUBLIC INSTRUCTION

The Superintendent of Public Instruction is designated by statute (Section 75-7803, R.C.M. 1947) as being responsible for the supervision and coordination of the conduct of special education in the state. This includes the promulgation of special education rules and regulations (Section 75-7802(2), R.C.M. 1947), the approval of school district special education classes and programs (Section 75-7811, R.C.M. 1947), and the approval of school district special education budgets (Section 75-7813.1(1), R.C.M. 1947). In addition, federal rules and regulations require the state education agency to monitor and evaluate school districts to assure compliance with federal rules and regulations. Thus, OPI has overall supervision and monitoring responsibilities for the special education programs within Montana.

Definition Of Learning Disabled And Emotionally Disturbed Handicaps

While attempting to verify eligibility for placement of students in special education programs, it became apparent that the definitions for learning disabled and emotionally disturbed handicaps are not clear. School districts apply differing interpretations to the Office of Public Instruction rules and regulations regarding placement eligibility for these particular handicaps. Much of the misinterpretation can be attributed to the fact that experts do not agree on the definition of a learning disability. A special

report by the National School Public Relations Association, Educating All the Handicapped, states that many experts frankly doubt the widespread existence of learning disabilities.¹ A discussion of the various rules and regulations and their application in Montana will demonstrate the vagueness of definitions of these two handicaps.

The U.S. Department of Health, Education and Welfare has not specifically defined a learning disability. Public Law 94-142 provides that a specific learning disability means a disorder in one or more of the basic psychological processes. The current rules and regulations developed by the Department of Health, Education and Welfare provide that a child has a specific learning disability if the child does not achieve commensurate with age and ability levels in one or more of seven specific areas and that there must be a severe discrepancy between achievement and intellectual ability in any one of the seven areas. However, the current regulations do not define what a severe discrepancy between achievement and ability is. The prior rules and regulations recognized the fact that the specific learning disabilities were difficult to identify and established a limitation of two percent of the school's population as a means of limiting the payment for federal assistance to the states. At one point, the Department of Health, Education and Welfare

¹ Educating All The Handicapped, National School Public Relations Association, 1977, p. 72.

attempted to identify students through means of a formula. That formula has since been deleted from its regulations because it was unworkable. The former regulations also defined a severe discrepancy as being performance 50 percent below the ability level--the student's functioning level is 50 percent below his measured intellectual ability. The most recent federal rules and regulations for identification of learning disabled children, included commentary that it was desirable to retain the two percent limit on learning disabled students for two reasons: (1) because learning disabilities are difficult to define based on current knowledge; and (2) because of the need for extensive research to be conducted before a universally accepted definition can be created. Due to these shortcomings, it was desirable that a limit be placed on the number of children eligible. However, this limit was rejected with the comment that it was almost universally acknowledged that there is a need for continued research on the nature and treatment of specific learning disabilities.

The state definition of a learning disabled child is likewise somewhat ambiguous. The state definition requires the identification of a dysfunction in psychological processing of perception, discrimination, understanding, attention, recall, language and the ability to listen, think, read, speak, write and perform mathematical calculations and a significant discrepancy between the person's potential and actual performance in one or more of the basic academic

areas. In speaking with psychologists, we were advised that it is easy to identify a dysfunction in psychological processing. Some have described processing dysfunctions as simply differences between individuals. One psychologist advised that he would prefer that the psychological processing dysfunction requirement be dropped from the state definition, simply because it is not meaningful to make that determination.

The state definition of a significant discrepancy is just as ambiguous--there is no means provided for quantifying the discrepancy between the student's potential and actual performance in basic academic areas. The OPI special education rules and regulations suggest a two percent limitation and a 50 percent functional discrepancy between expected achievement and actual achievement to school districts. However, these are not absolute impositions upon the school districts.

In evaluating the placement of students into special education, we observed a substantial difference in placement criteria used between districts for two handicaps--learning disabled and emotionally disturbed. Some districts chose to limit the placement of students to only those who had severe disabilities as contrasted to other districts who seem to be much more liberal in their placement policies. This seeming difference can be observed in the interpretation of the OPI rules and regulations related to special education. Some of the key problems which we observed relate to inadequate

definitions of the handicap. As noted, there is a significant difference between districts for placement into special education, and the decision for placement becomes highly judgmental on the part of the district. A school district may exercise considerable discretion for these highly judgmental placements. This permits a school district to place students, whereas the same students would be considered as regular education students in other districts.

We identified that the percent of learning disabled to total student population for the districts included in our review was 2.9 percent--3.4 for elementary and 1.9 for secondary. This percent ranged from a high of 10.6 to a low of zero percent. We also observed inconsistent application of the 50 percent criteria for defining the significant functional discrepancy. Another difference of interpretation related to slow learners--a classification where the child is capable of performance within or above the average range of learning potential. Some school districts would not place a child as learning disabled unless the child had average intelligence while others chose to place students whose tested intelligence was well below average measuring near the intelligence quotient of mentally retarded students.

The definition of the emotionally disturbed handicap also has some ambiguities. The federal definition of an emotionally disturbed handicap describes the students as seriously emotionally disturbed. In developing the Montana

definition, the school psychologists who participated in the process deleted the word "seriously." This was principally because the school psychologists do not like labeling a student emotionally disturbed and particularly wish to shy away from calling a student seriously emotionally disturbed. Apparently the handicap is not intended to be limited to only those students who have been clinically diagnosed as emotionally disturbed--autistic, psychotic, sociopathic or schizophrenic. However, in discussing the definition with Office of Public Instruction special education officials, they believe that the definition has an inherent conflict in one part which describes a characteristic of emotionally disturbed as an inability to build or maintain satisfactory interpersonal relationships with peers and teachers. The definition later provides that the term does not include children who are socially maladjusted. State special education officials cannot define who socially maladjusted children are and believe that that portion of the definition may be in conflict with the inability to build satisfactory relationships.

One school district which we reviewed seemed to be very liberal in its application of the emotionally disturbed definition. In that school district it seemed that the single most prevalent characteristic of the students placed in the special education program as emotionally disturbed was the lack of desire to attend school. This was supported by a number of school interest inventory tests and personal

interest inventory tests which showed the student didn't want to go to school and did not have a very high opinion of himself. In that instance, the school psychologist advised that these students would not be categorized as emotionally disturbed if they were solely evaluated on the basis of a clinical analysis. We were further advised by Office of Public Instruction officials that one school district rather than concerning itself with the problem of exceeding the two percent criteria, chose to classify the handicapped students as emotionally disturbed as contrasted to learning disabled. This being principally because the emotionally disturbed criteria does not have a 2 percent limitation on the numbers. Most school districts did not include students as emotionally disturbed unless they could be so defined by a clinical evaluation. The psychological consultant we employed to evaluate psychological services in the school districts commented that these two handicaps were not well described. The consultant attributed the problem partially to vagueness within psychological circles and partially with the state definitions. The consultant reported further that the vague definitions resulted in a considerable number of children being misclassified as learning disabled. One school official suggested that students with emotionally disturbed handicaps were probably mostly unserved.

RECOMMENDATION

We recommend that the Office of Public Instruction improve the definitions of both learning disabled and emotionally disturbed handicaps.

Program Monitoring

Montana statute (Section 75-7802, R.C.M. 1947), requires that special education programs in the school district be conducted in compliance with policies recommended by the Superintendent of Public Instruction and adopted by the Board of Public Education. Further, the law (Section 75-7803, R.C.M. 1947), directs the Superintendent of Public Instruction to supervise and coordinate the conduct of special education in the state. Federal rules and regulations governing the receipt of moneys by the state of Montana for use in special education require that the Superintendent of Public Instruction monitor special education programs. The federal requirement stems largely from a need to assure that the provisions of the federal law and the federal rules and regulations assuring proper evaluation, services and protection to parents and students are met.

The Office of Public Instruction in the past had a program for reviewing and monitoring the school districts. This program consisted of teams made up of available school district and state personnel. Another means of conducting program reviews in the school districts was through state employees who were situated in regional service centers. The employees of the regional service centers generally provided program review of smaller school districts which they served as a regional center. Our contact with school districts who had experienced program reviews suggested that

the assistance granted by these teams was helpful for administering the local district program. Many of the program review reports show that the same deficiencies which we observed were disclosed by the program review teams and regional service center personnel.

During the audit we found most of the teachers and administrators of special education programs wanted any assistance which could be extended to them. Those that had experienced program review expressed satisfaction that the assistance granted was valuable and worthwhile in the conduct of their programs. The single exception to the receptivity of these program reviews was the negative overtone employed by some of the review staff. Some officials of the school districts expressed concern that the program reviews should be more of a positive reinforcement of their efforts as contrasted to a negative criticism of their failings.

During the review we noted that several school districts had requested reviews but were turned down. The discontinuance of the previous system of program reviews probably stemmed from a bad experience which the Office of Public Instruction had with a school district which objected very strongly to the deletion of part of their special education program. The Office of Public Instruction special education officials advised that no program reviews had been conducted by the central office since January of 1977.

Files show that the Regional Service Centers conducted some program reviews in the smaller districts since that time.

The state plan which the Office of Public Instruction submitted to the U.S. Department of Health, Education and Welfare includes a section on monitoring activity. This plan provides that special education program reviews be scheduled to provide a formal on-site visit to each Montana school providing special education at least once within a three year period.

In previous sections of this report we discussed the need for reducing paperwork and deficiencies in the evaluation and child study team process, the preparation of individualized education programs, and placement of students in the learning disabled and emotionally disturbed handicaps. Improvements in the above program areas would lead to more effective results from special education programs in Montana. OPI has an overall supervisory responsibility to monitor the special education programs within the state. Its special education staff should provide this type of review, plus the technical expertise to assist the districts to ensure full compliance with special education laws within the school districts. Further, monitoring would provide OPI with information regarding whether all handicapped children are being served and a basis for seeking a waiver from the Department of Health, Education and Welfare to allow supplementing state funds with federal assistance.

The Office of Public Instruction has just recently employed a staff member whose function will be to organize the monitoring activities. Currently a question exists as to how this is going to be accomplished. One suggestion projects the use of contract program reviews.

RECOMMENDATION

We recommend that the Office of Public Instruction monitor school district special education programs.

STATE
OF
MONTANA
ATTORNEY GENERAL
MIKE GREELY

STATE CAPITOL, HELENA, MONTANA 59601 TELEPHONE (406) 449-2026

SCHOOLS AND SCHOOL DISTRICTS - Counting pupil-instruction-related days in computing the ANB;

SECTIONS 75-6902 and 75-7405, R.C.M. 1947;

HELD: Pupil-instruction-related days may be counted in computing the ANB number pursuant to administrative regulation interpreting Section 75-6902, R.C.M. 1947.

21 September, 1978

Mr. Morris L. Brusett
Legislative Auditor
State Capitol
Helena, Montana 59601

Dear Mr. Brusett:

You have requested my opinion concerning the correct method for computing the "average number belonging", or "ANB", for pupils attending public schools. The ANB is computed to determine the funding a school district receives from the school foundation program under Title 75, Chapter 69, R.C.M. 1947. You stated that school districts are adding seven "pupil-instruction-related days" to the number of pupil instruction days, which increases the ANB of school districts, and thus, the funds paid by the state to each school district. You have requested my opinion as to whether these "pupil-instruction-related days" may be counted in computing the ANB.

The basis for calculating the ANB is provided by Section 75-6902, R.C.M. 1947, as amended, which states in pertinent part:

Definition and calculation of average number belonging (ANB). The term "average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending the public schools of a district. Average number belonging shall be computed by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the current school fiscal year, and by dividing such total by one hundred eighty (180)

... When any pupil has been absent, with or without excuse, for more than ten (10) consecutive days including pupil instruction related days, his absence after the tenth (10th) day of absence shall not be included in the aggregate days of absence and his enrollment in the school shall not be considered in the calculation of the average number belonging until he resumes attendance at school.

"PIRD" is defined and explained by Section 75-7405, R.C.M. 1947:

Pupil-instruction-related day. A pupil-instruction-related day shall be a day of teacher activities devoted to improving the quality of instruction. Such activities may include, but are not limited to, in-service training, attending state meetings of teacher organizations, and conducting parent conferences. A maximum of seven pupil-instruction-related days may be approved by the superintendant of public instruction in accordance with the policy adopted by the board of education. Such days shall not be included as a part of the required minimum of one hundred eighty (180) days of pupil instruction.

The fundamental rule of interpreting these statutes is that the intention of the legislature controls, and if that intent can be determined from the plain meaning of the words, the statute speaks for itself, and there is nothing left to construe. Security Bank and Trust Co., v. Connors, Mont. ____, 550 P.2d 1313 (1976). In this instance, Section 75-6902 does not mention PIRDs for purposes of determining the "aggregate days of absence." It does mention, however, that PIRDs are to be included in the ten consecutive days of absence for which a student is removed from consideration for ANB computation. Section 75-7405 states that PIRDs shall not be included in the minimum 180 days for pupil instruction, but does not address the question whether they may be added after 180 days of pupil instruction are provided. Thus, the statutes are ambiguous as to whether the legislature intended PIRDs to be counted in the computation of ANB.

Where a statute is doubtful or ambiguous, practical administrative interpretations of that statute by the executive department charged with its administration are entitled to the highest respect. Where such interpretation is acted on for a number of years, it will not be disturbed except for

very cogent reasons. Assiniboine & Sioux Tribes v. Nordwick, 378 F.2d 426 (9th Cir. 1967), cert. denied, 389 U.S. 1046, 88 S.Ct. 764, 19 L.Ed. 838; Bartels v. Miles City, 145 Mont. 116, 399 P.2d 768 (1965). A majority of jurisdictions which have considered the question of school attendance, enrollment, or pupil population for purposes of apportionment of funds adhere to the view that the determination of the issue by the proper administrative official is conclusive. 80 A.L.R.2d 955, Section 3. The administrative interpretation was thus controlling in a situation similar to this issue, where the legislature was aware of the application of the administrative interpretation over a twelve year period, and made no material or substantial changes. Long v. Dick, 87 Ariz. 25, 347 P.2d 581, 80 AlR.2d 949 (1961).

It is also a rule of statutory construction in Montana that the legislature acts with full knowledge and information as to subject matter and existing conditions, including the construction placed on a law by the executive officers acting under it. Helena Valley Irrigation Dist. v. State Highway Commission, 150 Mont. 192, 433 P.2d 791 (1967). Although legislative intent is generally indicated by the legislature's action rather than failure to act, its silence may give rise to the implication of its legislative purpose. Bottomly v. Ford, 117 Mont. 160, 157 P.2d 108 (1945). Thus, the legislature is deemed to have sanctioned an interpretation of an executive department where it does not change it upon continued opportunity to do so. Miller Ins. Agency V. Porter, 93 Mont. 567, 20 P.2d 643 (1933).

In this instance, the Superintendent of Public Instruction has issued an administrative rule pursuant to the Montana Administrative Procedure Act, Title 82, Chapter 43, R.C.M. 1947, which directly addresses the issue of using PIRDs in computing the ANB. A.R.M. 48-2.38(1)-S3800 provides:

POLICY GOVERNING PUPIL INSTRUCTION-RELATED DAYS APPROVED FOR FOUNDATION PROGRAM CALCULATIONS (1) A school which in any year was in session for at least 180 pupil instruction days may count for the following year's foundation program a total of not more than seven days in addition to the required 180 pupil instruction days provided that such additional days were used for one or more of the following purposes in accordance with the regulations hereby established:

(a) Pre-school staff orientation (not to exceed two days): staff meeting(s) held prior to the beginning of pupil instruction for the purpose of organization for the school year.

(b) Staff in-service training programs: programs scheduled during the year for the purpose of improving instruction.

(c) Parent-teacher conferences: conferences between teachers and parents for the purpose of acquainting parents with the school and the progress of their children.

(d) Post-school record and report completion (not to exceed one day): record and report completion at the end of the pupil instruction year. This day may be divided so as to provide 1/2 day at the end of each semester.

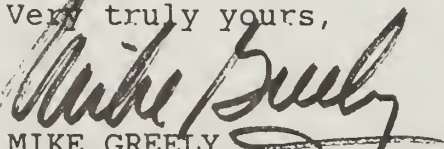
(e) State teachers' association meetings (not to exceed two days).

The history of this administrative regulation indicates that the rule was effective July 1, 1962, and has been followed since that date. The legislature has not altered the interpretation of this rule either by statute or legislative review. Under the foregoing analysis, this interpretation by the Superintendant of Public Instruction has thus been sanctioned by the legislature. Further, if this rule was adopted in accordance with MAPA, under expressly delegated authority, it has the force of law as a substantive rule. Section 82-4202(2), R.C.M. 1947.

THEREFORE, IT IS MY OPINION:

"Pupil-instruction-related days" may be counted in computing the ANB number pursuant to administrative regulation implementing Section 75-6902, R.C.M. 1947.

Very truly yours,


MIKE GREELY
Attorney General

AGENCY REPLIES



OFFICE OF PUBLIC INSTRUCTION

STATE CAPITOL
HELENA, MONTANA 59601
(406) 449-3095

Georgia Rice
Superintendent

October 5, 1978

Mr. Morris L. Brusett
Legislative Auditor
Office of the Legislative Auditor
State Capitol
Helena, MT 59601

Dear Mr. Brusett:

In accordance with our letter of September 22, 1978 we are supplying you with our comments, attached, to your Audit of Special Education.

Again, we compliment you on the thoroughness of the audit and the procedure which you and your staff used.

Sincerely,

A handwritten signature in cursive script that reads "Georgia Rice".

GEORGIA RICE
Superintendent

GR:es

Attachment

cc: Chairman Harold E. Gerke
Legislative Audit Committee and
Members of Audit Committee

October 5, 1978

RESPONSE TO LEGISLATIVE AUDIT
STATE OF MONTANA
SPECIAL EDUCATION
REPORT ON COMPLIANCE WITH LAWS
APPLICABLE FOR THIS STATE
SEPTEMBER 1978

Page 2
2nd paragraph

Correction: The official name of the advisory group is the Montana Special Education Advisory Panel.

Page 4
1st paragraph
last sentence

Comment: All 570 Montana school districts have special education services available to them either through direct budgeting (255) school districts in 1977-78 and 257 in 1978-79), cooperative agreements or regional services.

Page 8
2nd paragraph
line 8
and
line 10

Correction: Insert after "there be": a base population of

Correction: Insert after "a standard of": a base population of

Page 9
2nd paragraph

Comment: 257 school districts hold special education budgets and the remainder of the 570 districts in Montana have available special education service either through cooperative agreements with nearby districts which have special education budgets or through regional services, as provided for under RCM 75-7805(2), therefore, there are no districts in the state without available service. A distinction should be made with regard to services available to school districts and the appropriateness of said services as required for a requested waiver from the U. S. Commissioner. For further discussion of this point, please refer to our comment relating to page 52.

Page 11
1st paragraph
3rd sentence

Comment: The Office of Public Instruction does not agree that throughout all school districts excess paperwork is a problem.

Page 13
line 1

Comment: Should read: consent for pre-placement evaluation...

Page 14
2nd paragraph
line 8

Comment: This situation is changing as demonstrated by the court cases and impartial hearings held during the 1977-78 school year. Requests by parents for an impartial hearing on evaluations and placements of their handicapped children are now being received by school boards across the state.

Page 14
2nd paragraph

Comment: Office of Public Instruction does not agree that repetitive parental consent has been designed to satisfy a very small percentage of parents who may wish to object to the program and placement of their child. The requirement of parental consent was instituted to assist local schools in attempting to actively involve parents in the education of their children consistent with the intent and spirit of P.L. 94-142. Not only should parents be invited to participate in planning the educational program for their child but they should be educated as to how they can most effectively participate. Also, it is mentioned that parents "seldom do not agree..." Ideally the parents would never "not agree," the whole purpose of actively involving the parents in the process is to reach mutually acceptable decisions regarding diagnosis and educational plans. The purpose of involving parents is not to create adversarial positions but to foster cooperative plans for a child's benefit.

Page 14
3rd paragraph

Comment: The Office of Public Instruction does not agree that parental consent be deleted except as required by federal requirements. We prefer to follow the intent of the law rather than attempt to comply only with the strict letter of the law.

Page 15
Recommendation

Comment: Federal statute and rules and regulations under P. L. 94-142 along with Montana statute and Special Education Rules and Regulations require written documentation that parents are notified of and approve of special education services recommended for their child. Local school districts should be encouraged to review their procedures for involving parents in the planning, implementation, and evaluation of special education services for their children. Although the federal government does, in fact, require parents to sign only the evaluation consent and initial placement consent, the additional sign-offs currently required arise from two sources:

(1) Federal rules and regulations require parental notification of individualized educational program annual review, etc. The most effective way for a school district to document notification and implied understanding and agreement is to have the parents sign the relevant document.

(2) The intent of much of P.L. 94-142 and attendant rules and regulations is to ensure or almost compel extensive parental involvement in the entire process of special education. By requiring parental sign-offs, school districts are forced to actively involve parents and parents thereafter have little cause to claim the school was acting without their knowledge. At this time, the advantages of active parental involvement, including sign-offs, far outweigh the problems of increased paperwork. In addition local districts currently have the authority to establish whatever local procedures and keep whatever records that they see fit in order to protect themselves from suit.

Page 19
2nd paragraph

Comment: This area of concern is recognized by the Office of Public Instruction and is being addressed through state-wide inservice training in culturally appropriate assessment. Personnel receiving this training includes school psychologists, teachers, administrators, and other persons involved in the education of children. This recently initiated training activity is being developed and implemented in cooperation with the Montana Intertribal Policy Board, Subcommittee on Education. Other agencies and individuals will be invited to assist in the development of a comprehensive system which takes into account both school and home variables.

Page 20
Recommendation

Comment: (1) The need for complete records has been well emphasized by Montana Special Education Rules and Regulations and Federal Rules and Regulations. Continued emphasis will be directed toward ensuring complete records and will be specifically addressed during on-site monitoring activities. (2) Office of Public Instruction monitoring efforts will assist school districts in complying with federal rules and regulations. However, the Office of Public Instruction believes that inclusion of environmental/cultural information is important for proper diagnosis and educational planning for all children.

Page 23
Recommendation

Comment: The Office of Public Instruction concurs with this recommendation and has received federal funds under the Education of the Handicapped Act to provide this training.

Page 26
Illustration

Comment: It should be noted on Illustration 2-2 that the 1977-78 figures would give \$6,400 per child and the 1978-79 figures should give a \$4,708 per child figure. The reduction in per child cost shows an attempt to reduce costs.

Page 28
1st paragraph

Comment: Office of Public Instruction requests clarification of the origin of these figures.

Page 29
2nd paragraph

Comment: The Office of Public Instruction, by letter dated August 30, 1978, informed the Yellowstone Boys Ranch that they had the responsibility to collect tuition for out of state students.

Page 31
Recommendation

Comment: (3a) The State of North Dakota has been approached by the Office of Public Instruction and negotiations are underway.

Comment: (3b) The Bureau of Indian Affairs and the Office of Public Instruction have a broad agreement to coordinate services which will serve as a starting point for recommended negotiations.

Page 31
Recommendation
(continued)

However, all reservation territories in the state of Montana are in school districts; therefore, the cost of educating the special education Indian children would accrue to their home district. Thus, there would be no basis on which to ask for federal funds for those children placed outside of their Indian reservation's district. Why would the Bureau of Indian Affairs pay for something that the children are already entitled to under the state law?

Page 36
Recommendation

Comment: The Office of Public Instruction is presently developing an inventory system which will allow identification of equipment funded by special education funds, both shared and not shared.

Page 39
Recommendation

Comment: The Office of Public Instruction will continue offering budget workshops for school district business and administrative personnel.

Page 40
End of
1st paragraph

Comment: Office of Public Instruction became aware of the 50% problem in relationship to ANB after discussing it with several local districts. It is presently being addressed.

Page 41
2nd paragraph

Comment: Please note the Attorney General's opinion requested by the Legislative Auditor.

Page 51
Illustration

Comment: The Office of Public Instruction submits the following illustration which does not include an inflation factor:

<u>Year</u>	<u>Child Count</u>	<u>Entitlements</u>
FY76	5,994	\$ 385,484
FY77	10,490	\$ 735,282
FY78	9,954	\$ 735,282
FY79	***	\$1,586,667 ****
FY80	***	\$3,173,335 ****
FY81	***	\$4,760,002 ****
FY82	***	\$6,356,670 ****

*** Figures not yet available.
**** These are estimates computed with 1977-78 child counts (9,954) and the \$1,594 figure for the (NAPPE) national average per pupil expenditure times the appropriate percentum. Actual appropriations, of course, are contingent upon congressional approval. Additionally, child count figures will undoubtedly change in future years.

Page 51
1st paragraph
line 1

When this audit began there were only estimated figures available. This figure was estimated at \$720,000. When the actual grant came in it was \$735,282.

Page 52
1st paragraph

Comment: Pursuant to the requirements of Section 121a 589 of the federal rules and regulations (Federal Register, August 23, 1977), the Office of Public Instruction finds it inappropriate to submit an application for waiver to the U. S. Commissioner of Education. Clearly, the production of documented evidence via a special study as required in the regulations would not be feasible or possible at present. Also, additional federal requirements would render our application inappropriate since the Montana child count is significantly below the national average and a comprehensive system for locating, identifying, and evaluating handicapped children in Montana is not available.

Additionally, the act of applying for a waiver, would require the Office of Public Instruction to guarantee that full appropriate special education services are being provided to all handicapped children in Montana. This guarantee would result in a potential increase in litigation directed at the Office of Public Instruction in any situation where it is alleged that full appropriate services are not being provided. For these reasons, then, the Office of Public Instruction does not feel it appropriate to apply for a waiver.

Page 54
Illustration

Comment: The Office of Public Instruction states that the first four years' figures for state distributions are estimates and that the correct figure for 1977-78 Approved Budget is \$24,329,659. The difference in figures is due to arithmetic error.

Page 58

Comment: This is a statewide permissive deficiency levy as opposed to the statewide foundation program deficiency levy.

Page 60
Indirect Costs

Comment: Student body activities was omitted from the list of allowable indirect costs.

Page 64
1st paragraph
line 14

Comment: The discussion draft audit used the phrase "may not use" which the Office of Public Instruction believes is more correct.

Page 65
3rd paragraph

Comment: School districts submit special education budgets in the spring for the Office of Public Instruction review and FTE authority for programs to begin in the fall. The 1977 legislative mandate to provide special education services to all handicapped children between the ages of six and eighteen carried with it the requirement that a comprehensive evaluation and an Individualized Education Program be written for each handicapped child before services are provided by school personnel. The beginning of

Page 65
3rd paragraph
(continued)

school in the fall of 1977, found many school districts still in the process of carrying out evaluations and developing Individualized Education Programs for handicapped children who were informally identified the previous spring. This problem was anticipated by the Office of Public Instruction upon passage of House Bill 816 and steps were taken to assist local school districts in meeting the need for assessing the educational needs of local children (48-2.18(2)-S1840). Even with summer assessment programs carried out in districts which could hire the qualified staff, many districts started the 1977-78 school year with teachers on contract and in classrooms, but with "handicapped" students still going through the process before they could formally be considered eligible for special education services. The issue of class size and teacher workload in special education programs has been addressed during the 1978-79 budget approval process and with extensive evaluations and Individualized Education Programs implemented during the 1977-78 school year. Teacher workloads should be at the approved levels beginning with the 1978-79 school year.

Page 66
2nd paragraph
line 10

Comment: However, neither state nor federal law require that students be clinically diagnosed.

Page 69
2nd paragraph

Positions were not approved unless handicapped children were identified for the current year. The Office of Public Instruction relies on child count to identify actual workloads. The monitoring process that is being started should verify the child count reports.

Page 70
1st paragraph
line 18
and

Comment: Since the Office of Public Instruction is mandated to ensure the delivery of appropriate special educational services, it is the Office of Public Instruction's responsibility to encourage districts to add programs if unmet needs are determined.

last line

Correction: Correct figure is \$24,329,659.

Page 78
2nd paragraph
1st sentence

Comment: The Office of Public Instruction's new system develops a cost by service delivered on an hourly per child basis which can be translated to a handicapping condition cost figure. However, there is a question as to the appropriateness of this method of cost reporting. Being emotionally disturbed does not cost, it is what is done about it that costs money.

Page 79
Recommendation

Comment: (1) The weighted system proposed on this page has some severe problems when placing it in Montana. First, it operates on an average which penalizes those districts, whose local educational costs are higher than average. Second, it allows additional funds to those districts whose educational costs are below average. These two points may encourage districts to cut corners and thus provide less than appropriate service to get down to the average cost. Over several years this would drive the average down to the point where few could afford to operate special programs. Third, the larger districts in the state could survive with this system, but we doubt the smaller districts would be able to provide appropriate services at all. For example: if the weighting gives 1.25 for learning disabled on a scale of 1 for normal children, a small district with 2 learning disabled students would receive a weighting of 2.50 for the students. If it costs \$1,000 per normal child this district would then receive \$2,000 for the normal education and \$250 for the learning disabled. \$250 will not even begin to cover the costs of a learning disabled program for those two students.

Comment: (2) Even though this is a consideration and worthy of further study, some of the results of a percentage of funding by the local district could cause problems with equalization. Different districts generate different taxable values per child. Local district funding may force higher tax rates on poorer districts. This would lead to more reliance on the voted levy. If the people voted the levy down the districts would be forced, because of the mandates in special education, to drain general education funds to cover the special education costs.

Page 83
2nd paragraph

Comment: During budget analysis for the 1978-79 school year, the Office of Public Instruction initiated a requirement for districts to complete a learning disabilities checklist before approving that portion of the budget request.

Page 86
Recommendation

Comment: As the definitions are written into law and rules and regulations, it will also take legislative change as well as action by the Office of Public Instruction to improve these definitions. Currently, lack of agreement among school districts does exist as to the criteria for determining eligibility for these two classifications. This results primarily from the lack of specificity of the definitions currently provided in the Montana (and Federal) Rules and Regulations. A clarification of these definitions is needed and school districts should work cooperatively to ensure a more uniform interpretation and implementation of placement criteria for emotionally

Page 86
Recommendation
(continued)

disturbed and learning disabled students. Granted that although the lack of placement control and imprecise definitions appear to invite misuse, there is not hard evidence that such misuse is at all widespread. According to national and available state prevalence figures the number of emotionally disturbed children identified in Montana is a significant underestimate, while the number of learning disabled children is within the range of those reported.

Page 90
Recommendation

Comment: The Office of Public Instruction concurs that on-site monitoring of local special education programs is essential to ensure effective implementation of special education services. Plans to initiate limited monitoring activities have been developed and will be implemented this current year with the use of federal funds. However, in order to fully maximize the potential benefits from such activities a significant increase in staff and related expenses will be necessary.

A comprehensive monitor system should be capable of meeting the following minimum needs:

(a) Determine compliance with state and federal law and attendant rules and regulations.

(b) Provide technical assistance and consultatives to assist local special education personnel in identification, evaluation, record keeping, child study team procedures, staffing patterns, interpretation of definitions and any other needs expressed.

(c) Verify and assist in obtaining a full and accurate child count.

On-site monitoring of approximately one-third of all local special education programs (approximately 88 programs) will necessitate a core team of approximately 6 professional staff and 3 support staff. At present the Special Education Unit has 1 professional staff person assigned this responsibility supported by .5 time secretary. Thus, the fiscal impact of full monitoring would be approximately as is detailed below:

Approximate additional funds needed to conduct comprehensive statewide monitoring:

	<u>Totals</u>
5.0 FTE Professional Staff @ \$18,000	\$90,000
Fringe Benefits (14%)	12,600
2.5 FTE Support Staff @ \$7,500	37,500
Fringe Benefits	5,250
Travel and Per Diem	<u>80,000</u>
Total Additional Administrative	
Funds Needed	\$225,350



September 25, 1978

Mr. Morris L. Brusett
Legislative Auditor
State Capitol Building
Helena, MT 59601

Dear Mr. Brusett:

We have reviewed excerpts from your draft report on special education, and the following represents our response to your recommendations as they relate to the Department of Community Affairs.

. Separate Accounting for Special Education

Recommendation

We recommend that the Department of Community Affairs encourage all school districts to establish separate accounting for special education funds and report noncompliance in the school district audit report.

Response

We concur in the recommendation and in the conduct of our audits we will encourage all school districts to establish separate accounting for special education funds. We will also report any noncompliance in our school district audit reports. Through steps in our up-dated school district audit manuals, we have also advised independent auditors, under contract to us, of the need to establish separate accounting for special education funds. We would point out that Section 75-7813.1 (3), requires that "An annual accounting of all expenditures of school district general fund monies for special education shall be made by the district trustees on forms furnished by the Superintendent of Public Instruction. The Superintendent of Public Instruction shall make rules for such accounting." (Emphasis Supplied)

. Erroneous Calculation of Average Number Belonging

Recommendation

We recommend that the Department of Community Affairs require retention of attendance records in a fashion that will permit an audit of the ANB calculation, and audit the ANB calculations on a test basis for each school district.

Response

We concur in the recommendation and commencing with our school district audits for the 1977-78 fiscal year, we will request that district officials retain attendance records in a fashion

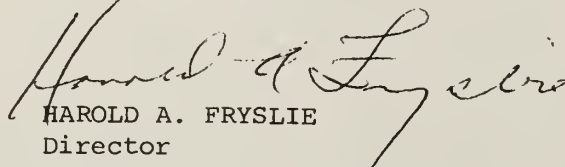
Mr. Morris L. Brusett
Legislative Auditor
September 25, 1978
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. Erroneous Calculation of Average Number Belonging - cont.

Response - cont.

which will permit an audit of ANB calculations. Commencing with the 1978-79 fiscal year school district audits, we will audit ANB calculations on a test basis for each school district. Through references in our up-dated school district audit manuals, we have also advised independent auditors, under contract to us, to make school district officials aware of the need to retain such records which will permit an audit of the ANB calculations.

Very truly yours,


HAROLD A. FRYSLIE
Director
Department of Community Affairs

HAF/mk

